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CURRENT TOPICS

Crown Privilege

THE question of the Crown's right to claim privilege from disclosure of reports of its servants was re-examined in *Ellis* v. *Home Office* (*The Times*, 14th and 15th May). A prisoner had unsuccessfully claimed damages from the Home Office for personal injuries suffered by him as the result of an attack by a fellow prisoner. A complaint was made that the plaintiff was handicapped in preparing his case by the fact that privilege was claimed by the Home Office in respect of a Hampshire police officer's report. It was argued that if such documents were to be liable to be disclosed freedom and frankness of expression by public servants in reports would be affected. In his judgment SINGLETON, L.J., held that he was bound by *Duncan* v. *Cammell Laird and Co., Ltd.* [1942] A.C. 624 to rule that the document was privileged. In the course of argument he had expressed his uneasy feeling that justice might not have been done because the material before him was not complete, and something more than an uneasy feeling that, whether justice had been done or not, it would not appear to have been done. It was of great importance that privilege should be maintained when the public interest was at stake, but in the case of the police reports here the judge at the trial might have been helped if he had had before him the result of the police inquiries when they were called in. Singleton, L.J., did not think that any harm would be done to the public interest by letting the plaintiff in a case like this see the result of the police inquiries or at least an abstract of them. If the wide claim of privilege was made it prevented anything being shown. In his view it was desirable that the particular document should be examined in each case. JENKINS and MORRIS, L.JJ., agreed, the latter saying that it was one feature of the public interest, which the Minister must take into account, to have regard to the administration of justice and that it should be done and be seen to be done. On the evidence it was held that the injuries inflicted did not result from a breach of the Prison Rules, 1949, and the appeal failed.

Custody: Removal of Child from Jurisdiction

A DIRECTION of the Senior Registrar of the Principal Probate Registry dated 11th May states that the President has approved the following new wording for the restriction against taking out of the jurisdiction a child the subject of a custody order: " . . . And it is directed that the said child be not removed from the jurisdiction until he or she attains the age of eighteen years without leave but provided that if the (petitioner) do give a general written undertaking to the court to return the said child to the jurisdiction when called upon to do so, the (petitioner) may with the written consent of the (respondent) remove the said child from the jurisdiction during the school holidays for any period specified in such written consent." This wording should be in future used in all decrees and orders unless the judge otherwise directs. Since many years must elapse before orders made in the old form cease to operate, the President has authorised registrars to vary the terms of the existing custody orders by order on summons, in unopposed cases, to the new form.

CONTENTS

Town and Country Planning Act, 1953

THE Bill to abolish development charge has at long last reached the statute book. On 20th May the Royal Assent was signified to the Town and Country Planning Act, 1953, too late for noting in the article on p. 367, *post*. We draw attention here, however, to the fact that under the Act certain assignments of claims for loss of development value are invalid unless notified to the Central Land Board *within one month after the passing of the Act*, i.e., by 20th June next. Fuller details will be found in the article referred to.

Accommodation Agencies

THE Accommodation Agencies Bill, the second reading of which was moved in the Lords by VISCOUNT SIMON on 14th May, proposes that the acceptance by accommodation agencies of fees for registration for tenancies of flats or other accommodation should be a criminal offence. Viscount Simon said that an estimate had been made that the public had been defrauded of £100,000, and he added that that sum included fees paid to agencies for houses which did not exist. In 1952-53 there were forty agencies in the London area accepting registration fees; of these fifteen had gone out of business, seven had been prosecuted and sixteen were still operating. His lordship thought that there would not be many prosecutions, but the people running the agencies would go out of business. LORD SILKIN made the point that anyone could set up in business as an estate agent and hoped that the Government would try to ensure that those who carried on this profession had some kind of qualifications. The Bill was given its second reading.

Agricultural Land (Removal of Surface Soil) Act, 1953

THE stripping of surface soil from land on any substantial scale is development within the meaning of the Town and Country Planning Act, 1947, since it involves operations on the land of a kind referred to in s. 12 (2) of that Act. Planning permission is therefore required. It has, however, says Ministry of Housing and Local Government Circular No. 26/53, been found that where large-scale operations are commenced without planning permission much harm can be done before enforcement action under the provisions of the 1947 Act can be made effective. The Agricultural Land (Removal of Surface Soil) Act, 1953, which came into operation on 20th May, makes it an offence to remove surface soil from agricultural land with a view to sale when the operations constitute development within the meaning of the 1947 Act and are carried out without permission. The amount of soil removed must amount to more than five cubic yards in any period of three months and the consent of the Attorney-General or the Director of Public Prosecutions is necessary before any prosecution can be brought. Penalties on summary conviction are severe, being for the first offence a fine not exceeding £100, with much stricter penalties for the second and subsequent offences.

Copyright in Manuscripts

THE Council of The Law Society direct the attention of solicitors, in the *Law Society's Gazette* for May, 1953, to the copyright position with regard to bequests of manuscripts. It was pointed out by the Report of the Departmental Committee on Copyright (Cmd. 8662) that testators making specific bequests of manuscripts often do not mention the copyright, with the result that the latter may fall into residue. Although by s. 17 (2) of the Copyright Act, 1911, ownership of a manuscript is *prima facie* proof of ownership of the copyright, this has been held not to apply to the construction of a will. The Departmental Committee recommend that s. 17 should be altered so that copyright should pass with the manuscript unless the testator has expressly provided otherwise.

Articled Clerks

SHOULD solicitors continue to be allowed to take premiums from articled clerks? Ought they to pay their articled clerks and, if so, should they pay them more than their mere expenses? These are more than merely ethical questions. The answers depend on whether apprenticeship is to be regarded in future as a responsibility of the master, or as a nuisance for which he requires compensation, or as a mere supplement or appendage to his manpower needs. There is, fortunately, an increasing tendency nowadays to regard it, like parenthood, as a responsibility which is not lightly undertaken. It is bad that either the possession of money or the temptation to take money should affect the performance of this duty, and yet the risk of having the encumbrance of an idle or useless apprentice must be covered somehow. It is bad that an articled clerk, especially nowadays when he may have already given two years to the Forces, should have to work for nothing, but there are many firms in which excellent experience is available, and which cannot afford to pay an additional living wage. A letter to the *Manchester Guardian* of 7th May, signed "Solicitor," proposed as a solution that The Law Society should prohibit the taking of premiums and a nominal salary should be paid, increasing as the articled clerk becomes progressively more useful, except, of course, when he is away at law school or because of imminent examinations. The Law Society's limited charitable funds, the letter stated, only touch the fringe of the problem. The solution proposed, it was said, would ensure that ability and not family means would govern entry into the profession. The discontent among articled clerks is understandable, for, as "Two Articled Clerks" wrote in the *Manchester Guardian* on 5th May, trainees in other professions have fees paid or contributed to by the State. It would not be in the interests of the legal profession or in the public interest that it should be State aided and it is, therefore, up to the profession to put its own house in order.

The Child on the Road

A STUDY group of professors, economists and statisticians and a well-known writer of children's books have produced a booklet entitled "The Child on the Road" and presented it to the National Federation of Women's Institutes. It is published for the Children's Safety Crusade Trust by the Economic Research Council, price four shillings. We have rarely seen anything that brings out more clearly the pitiable tragedies and wastage of life that occur daily owing to our present day reliance on motor traffic. By picture, graph and table the incidence of the different classes of risk is classified and analysed. The group scrutinised 30,000 accidents to children on the roads in 1951. As a sample of the productivity of their labours we quote that the maximum risk to the boy cyclist in his early teens is "about three times as great as the highest risk run by the little boy pedestrian of five to six going to school on his own for the first time, hitherto regarded as the most vulnerable of all road users." The group also find that stepping or running off the pavement accounts for just about as many road accidents to children as crossing the road. It is, in fact, the source of far more accidents to young children than crossing the road.

JUDGMENT SUMMONSES—III

SECTION 5 of the Debtors Act, 1869, confers the jurisdiction to commit a judgment debtor to prison, on the terms and in the conditions which we have discussed in the previous articles, upon "any court." But the first proviso to the section restricts the right to exercise the jurisdiction "in the case of any court other than the superior courts of law and equity" to a judge or his deputy. So that only courts which have a judge are in a position to entertain judgment summonses as such. Nevertheless, magistrates sitting as a court of summary jurisdiction were, by s. 35 of the Summary Jurisdiction Act, 1879, given corresponding powers in respect of the non-payment of any sum declared by that or any future Act to be recoverable summarily as a civil debt. The magistrates' courts have, however, a code of procedure of their own, and the rules about to be mentioned do not apply to them (cf. *per* Lord Goddard, C.J., in *R.* v. *Miskin Lower Justices* [1953] 2 W.L.R., at p. 417, referring to the more stringent process applicable in bastardy and separation and maintenance cases).

The rules regulating judgment summonses are a little scattered. Three rules in Pt. V (headed "Judgment Debtors") of the Bankruptcy Rules, 1952, are in particular point. They are expressed not to apply in respect of any order or judgment of the High Court made or given in a matrimonial cause, as to which a special set of rules has recently come into being (the Matrimonial Causes (Judgment Summons) Rules, 1952, S.I. 1952 No. 2209). Otherwise, the jurisdiction of the High Court under s. 5 of the Debtors Act is to be exercised by a High Court judge in person (B.R. 377). This means the judge in bankruptcy (order of the 1st January, 1884). No High Court judgment summons is to be issued unless the judge's leave is first obtained (B.R. 378). Application for leave is made *ex parte* by leaving a printed form with the judge's clerk. There must be at least £50 due under the judgment before the High Court will grant a summons. And the County Court Rules for the time being in force as to the committal of judgment debtors are, with any necessary modifications, made applicable in all courts (B.R. 383). The County Court Rules, Ord. 25, rr. 33 to 66, are thus relevant to the High Court procedure in non-matrimonial matters, though the "necessary modifications" tend to mask the basic similarity in the practice of the two courts. For instance, no leave to issue is generally necessary in the county court. A præcipe is left, accompanied by the plaint note or originating process and by an office copy of the judgment if it is one given in the High Court. An affidavit is required in verification of the amount due under a High Court judgment (Ord. 25, r. 37).

The county court præcipe acknowledges, over the judgment creditor's signature, that he is aware that if he does not, on the hearing of the summons, prove the means of the debtor (as explained in the previous articles) he may have to pay the costs of the summons. But the actual proof of means is deferred until the hearing. By contrast the High Court application embodies an undertaking to file, four days before the hearing, an affidavit of the debtor's means.

The rules as to the district in which the summons may be issued are, of course, solely applicable to the county court. If the court of issue is not the court in which the judgment was obtained, transfer of the proceedings is provided for by r. 48. The court for the district in which the debtor resides or carries on business is alone appropriate for the issue of a judgment summons where only one judgment debtor is to be summoned; if the creditor wishes to have two or more debtors, being jointly liable under the judgment, summoned together, he may choose the home court of either, but in that case he must either deposit or undertake to pay or tender on service of the summons the reasonable travelling and hotel expenses of the debtor who is out of the district (r. 38). Compensation for loss of time is not mentioned in this rule and need not be taken into account. In the High Court, too, travelling expenses are ordinarily tendered on service, but by r. 43 if this "conduct money" is paid or tendered and a notice in the prescribed form is annexed to the judgment summons, the latter becomes also a witness summons, and a debtor may then be fined by the county court under s. 81 of the County Courts Act, 1934, for non-attendance. It seems safer in High Court matters to issue and serve a subpœna along with the summons if the creditor wishes to make certain of the debtor's attendance.

Since the judge in bankruptcy sits in chambers, High Court judgment summonses are heard in private, or at least in the presence only of such other persons as have business before the court. But an inferior court can only exercise the Debtors Act jurisdiction by an order made in open court and showing on its face the ground on which it is issued (s. 5). Witnesses may be summoned or subpœnaed in either court to prove the debtor's means in the same way as upon the hearing of an action (Ord. 25, r. 42). Affidavit evidence is admissible in the High Court—as we have mentioned, an affidavit of means must already have been filed; in the county court affidavits are read only if the creditor does not reside or carry on business within the district (r. 46). A registered moneylender who takes proceedings by way of High Court judgment summons must produce at the hearing an up-to-date copy of the statement giving particulars of the loan required by s. 8 of the Moneylenders Act, 1927 (Practice Note (1929), 45 T.L.R. 476).

Another respect in which the High Court and county court procedures vary is in regard to the method of bringing into play an order made on the summons, whether it be for committal of the debtor or for payment of the debt by instalments. In the county court the registrar draws up an instalment or committal order, which is sent to the debtor, and payments under it must be made into court (r. 54 (3)). Subject to any suspension ordered, committal will issue upon the creditor filing a præcipe (r. 56). The debtor may at any time apply for further suspension (r. 54 (4)). Where an instalment order, made without committal, is not complied with a fresh judgment summons must be issued if committal is desired.

A creditor who has obtained an order in the High Court must participate more fully in its implementation. A practice note reported at [1934] W.N. 72 directs that he is to give the debtor notice by registered post at his last-known address of an instalment order, stating the amount of the debt due, the costs of the summons, the amount and period of the instalments and the day of the week or month on which the first instalment is directed to be paid. If default is made and it is desired to have the debtor committed, a fresh application will be necessary, either for the issue of the committal order, if that was made but suspended, or for the making of a committal order on a fresh summons (known as a committal summons) if the previous order was merely one for instalments. In the latter case a certified copy of the notice to the debtor must be lodged accompanied by a statement that no proceedings in an inferior court have been taken on the instalment order or on the judgment founding it.

The new Matrimonial Causes (Judgment Summons) Rules naturally follow the High Court rather than the county court practice. It is noteworthy that substituted service of the judgment summons is provided for on application to the registrar (r. 4 (2)). By C.C.R., Ord. 25, r. 39, and Ord. 8, r. 6, service is always to be personal. Rule 6 (1) (*b*) of the Matrimonial Causes Rules seems to restrict the power to make a new instalment order, where the judgment is an order for alimony, maintenance or other periodical payments, to those cases where it appears to the judge that the order would have been varied or suspended if the debtor had applied for that purpose.

The position with regard to arrears under the original judgment accruing during the period of suspension of a committal order is also novel. We have observed that the normal practice in non-matrimonial matters is for these also to be put into abeyance, though the judge ought to make a specific order in this sense (C.C.R., Ord. 25, r. 55, and [1935] W.N. 128). In divorce matters, no doubt because the most common subject of a judgment summons is an order for periodical payments fixed after an exhaustive inquiry into the parties' circumstances, the express authorisation in r. 6 (2) is for the suspension terms to be made *additional* to the accruing payments under the original order. And r. 6 (3) goes on to allocate, without option, payments made after such an order first to sums accruing under the judgment, and secondly towards the debt and costs covered by the judgment summons. It was the absence of any such allocation provision from the powers of magistrates that Lord Goddard, C.J., remarked on in *R.* v. *Miskin Lower Justices*, *supra*.

In matters before the bankruptcy judge and in the county court the general situation is that, in the absence of a specific appropriation by the debtor, payments go towards satisfaction of the latest order, and once a committal order has issued this is expressly provided for by the combined effect of Ord. 25, rr. 59–61 and 64.

J. F. J.

Taxation

THE FINANCE BILL, 1953

UNLIKE some of its predecessors this year's Finance Bill is a comparatively slim document and in this article we are primarily concerned with those of its provisions which are of general interest to practitioners. The existence of one or two other provisions will be indicated but it is not intended to elaborate on the niceties of specialised matters such as double taxation relief.

INCOME TAX AND SUR-TAX

Rates (*cll.* 10 *and* 11)

Taking into account reduced rate relief the rates of income tax for 1953–54 are :—

£	£	s.	d.	
Under	100	2	6	
100	250	5	0	
250	400	7	0	
over	400	9	0	(standard rate)

It will be recalled that when the standard rate was last reduced in the year 1946–47 sur-tax rates were adjusted so that the relief afforded to those liable to this tax was considerably reduced. In the present instance sur-tax rates remain untouched so that now no income is taxed at a higher rate than 19s. in the £.

Reliefs (*cl.* 12)

It will be remembered that where the taxpayer (or his wife if she is living with him) is over sixty-five years at any time in the year of assessment and his income does not exceed £500 he is entitled to an age allowance of two-ninths, comparable to earned income relief. There is a provision for marginal relief where the income is just over the limit. (Income Tax Act, 1952, s. 211.)

It is now provided that the limit is to be increased from £500 to £600 with marginal relief as before.

The allowances for a housekeeper, dependent relative, etc., which are granted by the Income Tax Act, 1952, ss. 214, 215, 216 and 218 are now, where they are admissible, to be £60 instead of £50 as before, and the upper qualifying limit of income for a dependent relative is now £145 instead of £135. The result is that the full relief is obtainable where income of the dependent relative is £85 or below and it diminishes to nothing at £145.

Losses (*cl.* 13)

In general, when the taxpayer sustains a loss in his trade or profession he can either have it set off against his other income for the year in question (Income Tax Act, 1952, s. 341) or can carry it forward to set against future profits of the trade, etc. (*ibid.*, s. 342). Clause 13 deals with the s. 341 type of set-off and particularises precisely what other income is the primary income against which the set-off is to be made.

Statutory authority is given to the practice whereby such a loss is primarily set-off against earned income from other sources so that the taxpayer's earned income relief is *pro tanto* lost. It is provided that in the case of a married taxpayer he can demand that the loss be set-off against his own income exclusively leaving that of the spouse untouched so that the reliefs admissible thereon are unaffected.

It is also provided that where there is a loss which has not been set-off under s. 341 because there is insufficient other income the unexpended balance of the loss can be set-off against general income in the following year if, but only if, the taxpayer retains the source of the loss. In such a case it is given priority to any set-off which may be allowed in respect of a loss in the current year.

Initial allowances (*cl.* 14)

Initial allowances are to be restored in respect of expenditure incurred on or after 15th April, 1953. This will be generally popular but one may perhaps offer a reminder that the taxpayer does not, in the long run, get any larger wear and tear allowance than before ; what he does do is to get it much earlier in the life of the asset. From the viewpoint of an economist the initial allowance is very like a temporary government loan to finance and encourage re-equipping.

Partnerships (*cl.* 17)

In the past, when the constitution of a partnership changed by the taking in of a new partner or by the death or retirement of an old one the partners might opt that this should be regarded as a discontinuance for tax purposes. Such an option had to be exercised by all the partners and by the personal representatives of a deceased partner and if any did not agree then the assessment proceeded as if there had been no change. Not only might this lead to dissension

and even, in some cases, petty blackmail between partners, but if there had been two such changes within a short period the decision of *Osler* v. *Hall and Co.* [1933] 1 K.B. 720 would apply if the option had been exercised on the second occasion but not on the first: the result of this was that if the partners knew what they were about they could, by suitable changes in the constitution of the firm, avoid paying tax on part of the profits of an unusually good year. There are also other anomalies in the taxation of partnerships some of which are almost impossible to remove within the framework of the present tax system.

Clause 17 deals with these difficulties so far as is practicable by giving broad effect to the recommendations of the Millard Tucker Committee (Cmd. 8189), para. 72. In outline, the new provisions proceed by reversing the direction of the option, by reversing *Osler* v. *Hall* and by providing specifically for the carry-forward of losses, etc.

In future where there is a change in the constitution of the firm this will be regarded as a cessation, and where there has been a change in the allocation of profits as between partners this will be regarded as a cessation if any individual partner within six months of the change gives written notice to his partners and to the authorities. But in either case the partners as a whole may elect, within twelve months, that the cessation provisions shall NOT apply, providing always that at least one person remained in the business throughout. It will be observed that this option not to have a cessation must be exercised by all the partners but that, unlike the old option, to have a cessation, it need not be joined in by the personal representatives of the deceased partner. It will also be observed that in the case of a re-allocation of profits it appears that the option can only be exercised where the partner originally giving the notice has been persuaded to change his mind.

Sub-clause (5) deals with the method of assessment where the option is exercised and there is no cessation. Profits are to be apportioned on a time basis and *Osler* v. *Hall* is to have no application. Sub-clause (4) provides that where there has been a cessation, losses and outstanding capital allowances may be carried forward by the old partners.

Subvention payments (*cl.* 18)

The Millard Tucker Committee (Cmd. 8189, para. 294) recommended that where in a group of companies one agrees to pay to another a sum out of, but not exceeding, its profits to meet a loss incurred by the receiving company such a payment should be regarded for tax purposes as a business expense by the paying company and a business receipt by the receiving company. Clause 18, with a wealth of detail extending over three pages, broadly speaking gives effect to this in the case of groups where the subsidiaries are at least 75 per cent. owned by the holding company.

Copyright royalties (*cl.* 20)

The Income Tax Act, 1952, s. 471, provided, in outline, that where an author has spent more than twelve months on the production of a work and where he wholly or partially assigns the copyright or grants a licence for a lump sum he can apply to have that lump sum apportioned backwards in time. If he had taken from twelve to twenty-four months the sum is split as to one-half in the year of receipt and one-half in the previous year: if he has taken twenty-four months or more the split is one-third in the year of receipt and one-third in each of the two preceding years.

This is now to be extended to include not only lump sums but royalties received from time to time within two years of first publication.

Exporting overdrafts (*cl.* 22)

Under s. 132 (3) of the Income Tax Act, 1952, certain income arising from securities or possessions out of the United Kingdom is taxed on a "remittance" basis. In the well-known case of *Hall* v. *Marians* (1935), 19 Tax Cas. 582, the taxpayer was in receipt of income in Ceylon which was paid into a banking account in Ceylon: after some time he purchased some India Bonds out of the balance of that account. He then incurred an overdraft at the London office of the same bank and then he instructed the Ceylon branch to sell the India Bonds and apply the proceeds to discharging the overdraft. This was done by entries in the books of the bank and the transaction was held not to be a remittance. A similar result was arrived at in *I.R.C.* v. *Gordon* (1952), 96 SOL. J. 280. It suffices to say that cl. 22 provides that this shall no longer be so.

Miscellaneous

There are provisions dealing with industrial buildings (cll. 15–16); unremittable overseas profits (cl. 19); double taxation relief (cll. 23–24); assessments in the Scilly Isles (cl. 27) and a provision giving farmers whose stock has been compulsorily slaughtered a last chance of opting for the "Herd Basis" of assessment (cl. 21). It is not thought that any are of sufficient general interest to require detailed consideration here.

ESTATE DUTY

Despite the rumours that were circulating before the Budget was opened there is only one provision as to estate duty and that is hardly one which will be of wide application. There has long been a provision whereby the Commissioners could, at their discretion, accept land in satisfaction of duty, although for many years it was hardly ever applied. In 1946 that provision was extended to a certain degree and since then rather more use has been made of it. It is now proposed to extend it to certain objects other than land and accordingly any objects which are or ordinarily have been kept in any building which—

has been or is going to be itself accepted in satisfaction of estate duty; or

belongs to the Crown or the Duchy of Lancaster or of Cornwall or to a Government department or is held for the use of a Government department; or

is within the Ancient Monuments Consolidation and Amendment Act, 1913; or

is vested in the National Trust

may in any case where it appears to the Treasury desirable that the objects should remain associated with the building, be accepted in satisfaction of duty (cl. 28).

The conditions and machinery of the transfer will be the same as in the case of land transferred under the Finance (1909–10) Act, 1910, s. 56, as amended and extended by the Finance Act, 1946, ss. 50 and 51. That is to say the Treasury may direct that the objects be transferred to some body other than the Crown or to trustees for such a body.

It will be remembered that by the Finance Act, 1930, s. 40, certain objects of national, historic, scientific or artistic interest are exempt from estate duty entirely unless and until they are sold otherwise than to the National Gallery or the British Museum or to some other approved institution. It is now provided that if such objects are accepted in payment of estate duty under this clause such a transaction shall not be considered as a sale. Thus, if such objects are accepted they do not themselves pay any duty nor do they by aggregation increase the size of the general estate. It may be because

of this that the class of objects which may be accepted is so severely limited to those in buildings as set out above. Were there a general provision that *objets d'art* of outstanding merit might be accepted without such limitation some interesting transactions might be made possible.

Thus, suppose *A* to die worth exactly £1,250,000. Estate duty at 80 per cent. would amount to £1,000,000 and his family would be left with £250,000. If shortly before his death he had invested £250,000 in old masters of the finest quality and if the Treasury could be prevailed upon to accept them in payment of duty then the position would be estate duty on £1,000,000 at 75 per cent. — £750,000 satisfied as to £250,000 by the old masters and as to £500,000 in cash leaving his family with exactly twice as much as before. Of course the executors could not compel the Treasury to accept the pictures but it might be, if the alternative were their sale abroad, that public opinion would be brought to bear. Of course, where objects are accepted under the present provision there will be a similar result, but the ambit is much reduced by the above-mentioned restriction. G. B. G.

A Conveyancer's Diary

THE MATRIMONIAL HOME AND THE DESERTED WIFE —AN EPILOGUE

My recent attempt to draw some sort of a conclusion from the decisions of the past year or two on this highly controversial subject has not met with universal approval. A correspondent has written to express his disappointment that my survey of the cases did not refer "to the most recent case, *Ferris* v. *Weaven* [1952] 2 All E.R. 233, in which *Bendall* v. *McWhirter* was applied and *Thompson* v. *Earthy* distinguished," and his hope that I would return to this subject in order to deal with this particular case. This I gladly do.

The facts in this case were as follows: In 1941 a husband deserted his wife (the defendant). He was then the estate owner of the matrimonial home, which was subject to a mortgage under which the mortgage money was repayable by instalments, and after leaving his wife the husband wrote and told her that, so long as she lived separate from him, she could have the use of the house and the furniture in it, and that he would pay the mortgage instalments and the rates on the house. This arrangement continued for ten years, during which the wife, apparently, did not apply for maintenance, but continued to live in the house with her daughter. In 1951 the husband, wishing to obtain possession of the house so that he could dispose of it, sold it to the plaintiff (who was his brother-in-law) for £30. This £30 was never paid by the plaintiff, who only entered into this transaction to oblige the husband. The plaintiff did not exercise any rights of ownership over the house, the husband continuing to pay outgoings. There is no note of the circumstances in which the action, which was a simple action for possession, was brought, but it is a fair guess that it was on the husband's instructions rather than on those of the plaintiff that the writ was issued. Nor is there anything in the report to indicate that the house had been conveyed by the husband to the plaintiff (the expression used in the statement of facts is the equivocal "sold"), but presumably a conveyance must have been executed, since otherwise the action could have been defeated *in limine*. (The price of £30 seems clearly to have been an undervalue. One wonders what the stamp duty paid amounted to, and how it was calculated.)

These were the facts. The headnote to the report, after a summary of the facts, goes on to say: "Held: the wife was a licensee with a contractual right to remain in the house as a result of the arrangement with her husband, and in the circumstances the purchaser was not entitled to recover possession of the house. *Bendall* v. *McWhirter* ([1952] 1 All E.R. 1307) applied."

The judgment of Jones, J. (the action was one in the Queen's Bench Division), supports this headnote, both generally and more particularly in its reference to *Bendall* v. *McWhirter*, and it is thus pretty clear that there is a conflict here between this case and *Thompson* v. *Earthy* [1951] 2 K.B. 596. The latter decision has already been examined in these pages (see p. 255, *ante*), and it is, therefore, necessary to analyse the judgment of Jones, J., in *Ferris* v. *Weaven* to see how, on basically similar facts, he reached, and considered himself to be justified in reaching, a different conclusion from that so recently reached by Roxburgh, J., in *Thompson* v. *Earthy*.

The judgment of Jones, J., is of considerable length, but a good deal of it was devoted either to summaries of, or extracts from the judgments in, other cases on the subject, and I think that a very fair idea of this judgment can be conveyed by referring to the several points made at several stages in its course. The first stage was the finding that the plaintiff knew of the arrangement between the husband and the wife. (There was an allegation to this effect in *Thompson* v. *Earthy*, but it was not admitted, and Roxburgh, J., treated it as immaterial.) The second stage was a reference to *Thompson* v. *Earthy*: the learned judge referred to the facts in that case in some detail and then read the cardinal passage from the judgment of Roxburgh, J., leading up to the conclusion that the wife in that case had not proved any interest, legal or equitable, in the premises and that she was, in consequence, a mere trespasser. Jones, J., referred to this passage as intended to lay down a general proposition, and there is nothing here to show that the learned judge dissented from that proposition, though, as subsequently appears, he may have had some reservations about it. Jones, J., then went on to say that the wife's counsel had contended, in reference to *Thompson* v. *Earthy*, that the wife in the case before him had established an equitable interest on which she could rely, but this contention was not, in the view of Jones, J., supported by anything in the judgment of Roxburgh, J., in the earlier case.

The third stage comprises a long reference to *Errington* v. *Errington* [1952] 1 K.B. 290. That case (as the learned judge noted) was not one in which the rights of husband and wife were in issue: it was a case on the construction and effect to be given to a contractual licence to occupy property, and the lengthy passages cited by Jones, J., from the judgments of Somervell and Denning, L.JJ., in that case all refer to the proposition that, as a result of the impact of equitable principles on the purely legal position of licensees, a licence may now be regarded, in certain events, as irrevocable. One of the passages here cited from the judgment of Denning, L.J., in *Errington* v. *Errington* is to the effect that, where a licence is irrevocable, nobody can disregard it except

a purchaser for value without notice. This reference is obviously connected with the finding in *Ferris* v. *Weaven*, that the plaintiff had notice of the wife's licence, but this connection is not expressly brought out, and the learned judge did not attempt to extract and put in his own words the lesson which, it seems clear, he thought could be drawn from *Errington* v. *Errington* in resolving the particular problem before him; that must be inferred, therefore, and the inference I draw is that, on the authority of *Errington* v. *Errington*, the learned judge was here holding that the wife's licence to occupy the house was an irrevocable licence.

From this stage, Jones, J., passed to the fourth and last stage of his judgment, which dealt with *Bendall* v. *McWhirter*. The learned judge first read the headnote to the report of that case in the All England Reports ([1952] 1 All E.R. 1307), which is in these terms: "The right of a deserted wife to stay in the matrimonial home proceeds out of an irrevocable personal licence which the husband is presumed in law to have conferred on her. Her occupation is comparable with that of a contractual licensee, save that her licence is not revocable except by an order of the court, and, as a contractual licensee who is in actual occupation of the land, she has an interest which is valid, if not at law, then in equity, against the successors in title of her husband, including his trustee in bankruptcy. The property of the bankrupt passes to the trustee in bankruptcy subject to all the equities and liabilities which affect it in the bankrupt's hands, and, therefore, the trustee takes the property subject to the clog or fetter that the wife cannot be ejected from the property." Jones, J., then said that counsel for the plaintiff had referred him to the judgment of Romer, L.J., in this case, but that in his (the learned judge's) view the decision in *Bendall* v. *McWhirter* had the effect of supporting the contention of the wife in the case before him, viz., that as her husband's licensee she could not be ejected from the house by a purchaser from the husband, or at least by a purchaser from her husband with notice of her licence. Judgment was, accordingly, given for the wife.

With all respect to the learned judge, this decision and the judgment which supports it are not wholly satisfactory, for a number of reasons. First, no attempt is made in terms to distinguish *Thompson* v. *Earthy* from the facts of *Ferris* v. *Weaven*. I have suggested that a distinction was present to the learned judge's mind in this, that in the case before him he had fixed the plaintiff with notice of the wife's licence. But if the fact of notice or no notice is material in this kind of case, then *Thompson* v. *Earthy* was wrongly decided, for on that footing Roxburgh, J., in that case, would have been bound to pronounce on the allegation that the plaintiff had notice of the wife's licence, and, if he had found that the plaintiff did have such notice, to give judgment for the defendant; but there is no suggestion in *Ferris* v. *Weaven* that Jones, J., had any doubts about *Thompson* v. *Earthy*; indeed, in refusing the argument to which I have already referred, that the wife had an equitable interest which she could enforce within that decision, on the ground that there was nothing in his brother Roxburgh, J.'s decision to support it, he was, apparently, expressing full agreement with that decision. Then, when one comes to the part of this judgment dealing with *Bendall* v. *McWhirter*, difficulties of another kind arise. That case was, on the facts, quite different from *Ferris* v. *Weaven*, and, as I tried to point out when I wrote on the subject last, the majority judgment brought this out: a trustee in bankruptcy takes subject to *all* equities, including the equity conferred on a wife by a licence to occupy the matrimonial home, but *non constat* that a purchaser from a husband takes subject to, at any rate, that particular equity. When, therefore, Jones, J., said that he thought that *Bendall* v. *McWhirter* supported the wife's contention in the case before him, what he was really saying (if I may suggest so) was that the headnote to the case which he had just read supported that contention. But that is not at all the same thing. The first sentence of the headnote to *Bendall* v. *McWhirter* in the All England Reports, when scrutinised, turns out to be a collection of *dicta*—widely separated *dicta* at that—from the judgment of Denning, L.J. The last sentence, which contains the gist of the decision, is the only proposition for which the case is, in my opinion, any authority at all. If, therefore, Jones, J., in *Ferris* v. *Weaven* followed *Bendall* v. *McWhirter* in preference to *Thompson* v. *Earthy* (he did not, as my correspondent suggests, expressly distinguish the latter case—that is one of the difficulties in this judgment), this was only in the sense of following the *dicta* of a single member of the Court of Appeal delivered in a judgment in a case which is clearly distinguishable from the case of *Thompson* v. *Earthy*, in preference to the decision in the latter case, the *ratio decidendi* of which is perfectly clear and *prima facie* applicable to the facts before him.

If I have interpreted *Ferris* v. *Weaven* rightly, then it seems to me quite incompatible with *Thompson* v. *Earthy*, and the question for the practitioner inevitably arises: which is preferable? I have already suggested (see p. 273, *ante*) that there is nothing in *Bendall* v. *McWhirter* to affect the authority of *Thompson* v. *Earthy*. I interpret *Ferris* v. *Weaven* as an offshoot, not of *Bendall* v. *McWhirter*, but of *dicta*, not material to that decision, in that case, and on balance, with all respect, I do not think that *Ferris* v. *Weaven* would be followed in preference to *Thompson* v. *Earthy* in any case where the difficulties of the former of these two decisions were fully discussed. As to the general position of the deserted wife, I find powerful reinforcement for the decision in *Thompson* v. *Earthy* in the judgment of Jenkins, L.J., in the recent case of *Hole* v. *Cuzen* [1953] 1 All E.R. 87, where the learned lord justice used these words in reference to *Bendall* v. *McWhirter* (at p. 91): "The right of the wife and the obligation of the husband . . . was a personal right and a personal obligation . . . Yet it was held that the trustee in bankruptcy would not disregard the wife's interest. That shows, I think, that although it has been said . . . that the trustee in bankruptcy is simply the assignee, like any other assignee, of all the property of a bankrupt . . . that unqualified statement does not provide a universally adequate definition of the trustee's position, for, if it was an exhaustive and accurate definition of his position, the decision in *Bendall* v. *McWhirter* must, as it seems to me, have gone the other way. . . . If the trustee was simply in the position of an ordinary assignee of the house, I should have thought that there would be grave difficulty in seeing how there was any interest in the wife which could override his interest as assignee, for the husband's obligation to the wife was, as I have said, purely personal."

'A B C'

Mr. ERIC BAND, solicitor, of Newport, Isle of Wight, has been appointed clerk to Newport Borough Justices.

Mr. EDWARD WILLIS GOCHER, deputy Town Clerk of Chester, has been appointed Town Clerk of King's Lynn.

Mr. R. C. LIDDELL has been appointed assistant solicitor to Maidenhead Corporation.

Mr. RHYS LLEWELLYN-JONES, solicitor, of Mold, Flints., has been appointed coroner for Flintshire as from 6th May.

Landlord and Tenant Notebook

EVICTION OR DEROGATION FROM GRANT?

THE course of the proceedings in *Perera* v. *Vandiyar* [1953] 1 W.L.R. 672 (C.A.); *ante*, p. 332, took an unexpected turn. The plaintiff, tenant of part of a house the rest of which was occupied by the defendant his landlord, sued in the county court for damages for breach of his tenancy agreement, the breach having consisted of the cutting off of gas and electricity in consequence of which the plaintiff and his family had had to go and stay with friends for five days: the supply was then restored in compliance with an interlocutory order.

All judges concerned were agreed in viewing the defendant's conduct with disapproval, though there was, perhaps, some divergence as regards degree. The county court judge characterised it as cruel and wicked; Evershed, M.R., accepted this estimate but did not think it amounted to "a high-handed outrage of the kind to which Lord Sterndale, M.R., referred" (*Cruise* v. *Terrell* [1922] 1 K.B. 664 (C.A.); but what is said is that re-taking possession under erroneous claim of right is *not* a high-handed outrage); Birkett, L.J., was not quite sure about the "cruel and wicked," but considered the conduct "to say the least of it, most reprehensible"; Romer, L.J., described it as deliberate and malicious.

At all events, what happened was that when the county court judge had heard the evidence, he came to the conclusion that the measure of damages in an action for breach of contract entitled him to award no more than £25 general and £3 10s. special damages, and then asked the plaintiff's counsel why he had not sued for eviction, and offered to give leave to make the necessary amendment. The offer was accepted and a further £25 damages, "punitive damages," were then awarded under this head. The defendant's appeal appears to have limited itself to a complaint that the damages were excessive; but the judgments delivered in the Court of Appeal proceed on the ground that there was no cause of action in eviction at all, or at all events no separate cause of action. "In so far as eviction is achieved, it seems to me *prima facie* to be a breach of contract," said Evershed, M.R. In Romer, L.J.'s, judgment we find: "Eviction might, in certain circumstances, be a tort, and certainly if it involved also trespass, but the mere intention to evict cannot, as I see it, be a tort . . ."

In these passages, the learned Master of the Rolls and lord justice were distinguishing the case from that of *Lavender* v. *Betts* [1942] 2 All E.R. 72 (C.A). The defendant in that case was a landlord who had removed doors and windows from a flat occupied by the plaintiff, a statutory tenant who was in arrear with rent. "When my tenants do not pay rent and I want to get rid of them, if I go to court it takes time to get the cases on, and county court judges make terms, and it is very difficult to get rid of your tenants" was his candid explanation, and the court awarded aggravated damages for trespass. Trespass is, indeed, a tort; but in *Perera* v. *Vandiyar* there was, it was held, despite an intention to evict, no trespass. "Nor am I satisfied that there was any trespass here in relation to gas and electricity" (Evershed, M.R.). It would be hard to establish that the cutting off was a trespass. "You take my house when you do take the prop that doth sustain my house," observed Shylock (M. of V., IV, 1), but it was the whine of a defeated and disgruntled litigant, whose very ignorance of the law accounted for his plight. And in so far as the observation may have been intended to advance a proposition in law, it has not been borne out by *Upjohn* v. *Seymour Estates, Ltd.* [1938] 1 All E.R. 614 (failure to shore up wall caused apertures in premises, occupier having to quit and his stock being damaged).

Reflection suggests that the trouble really began when the word "eviction" was first used. Pedantically drawn distinctions may be out of place in a county court, perhaps out of time anywhere; but eviction, if one examines the authorities, appears to be an answer to a claim for rent rather than a cause of action either in contract or in tort. Intention to determine the tenant's occupation is then an essential element (*Henderson* v. *Mears* (1859), 1 F. & F. 636; *Newby* v. *Sharpe* (1878), 8 Ch. D. 39 (C.A.)); but the plea can succeed even if the tenant remains in possession (see *Griffith* v. *Hodges* (1824), 1 C. & P. 419); and there are at least two decisions showing (i) that misconduct by a landlord of furnished premises entitled a tenant to leave, paying rent only up to the time of departure (*Kirkman* v. *Jervis* (1839), 7 Dowl. 678); and (ii) that nuisance putting an end to the comfortable occupation of premises let under a written agreement entitles a tenant to quit as soon as he finds other premises, and that his liability for rent then ceases when the nuisance began (*Cowie* v. *Goodwin* (1840), 9 C. & P. 378, N.P.; see further *Cowey* v. *Goodwin*, 4 Jur. 506). Admittedly these two decisions may be referred to breach of implied condition rather than to eviction; moreover, it would seem that the intention to deprive may have been lacking, and on the reasoning shown, the tenancies were actually *determined*, which is not the case when there is eviction.

But, this being so, one may wonder whether, if there had been more time, the plaintiff could not have found some additional cause of action worth £25? There was no trespass, so *Lavender* v. *Betts* would not help; breach of covenant for quiet enjoyment would have been breach of contract like breach of agreement to supply or permit the supply of gas and electricity. But what of derogation from grant, which, as was pointed out in *Grosvenor Hotel Co.* v. *Hamilton* [1894] 2 Q.B. 836 (C.A.), may come in useful when for some technical reason (in that case, there was an express covenant which did not avail the tenant) an action for breach of covenant for quiet enjoyment would fail? In that case the plaintiffs let two houses to the defendant for fourteen years, with tenant's option to break at seven years. The term commenced at Ladyday 1887 and in 1887 and 1888 the plaintiffs sank wells on their own adjoining premises, the working of which (powerful engines being used) caused vibration and ultimately made the defendant's premises unsafe; orders were made for pulling down some of the walls. That was in 1893, and in July of that year the defendant and his family went out of residence; in September he moved his business from the premises and advised the plaintiffs that they were unoccupied. He also exercised his option to determine at Ladyday 1894. He paid rent till Midsummer 1893 and refused and was sued for the Michaelmas rent and counter-claimed damages; judgment was entered for the amount claimed; but he was awarded sums representing the costs of removal, the loss of profits from business, and an apportioned part of the rent from his giving up possession until Michaelmas, for "loss of possession." The Court of Appeal agreed that there was no defence to the claim itself and, while reducing the amount of the damages awarded on the counter-claim as being too high (but not limiting them to the value of the term of which the defendant was deprived) clearly treated the cause

of action as derogation from grant. The item in the damages representing rent in respect of the period after giving up possession shows, in effect, that a derogation which makes the premises useless produces more than "eviction." Whether, incidentally, the plaintiff in *Perera* v. *Vandiyar* paid rent for the five days during which he was absent is not mentioned in the report.

This does not mean, of course, that there must be eviction before the doctrine will operate; and neither does it mean that there must be some damage to the demised premises themselves. In *Aldin* v. *Latimer Clark, Muirhead & Co.* [1894] 2 Ch. 437 a timber merchant whose landlords had known of his intended user of the land for drying timber complained that building operations on land retained by them obstructed the flow of air necessary for that purpose, and he was held entitled to damages (though not to an injunction). And cutting off gas and electricity does seem analagous to cutting off air. The maxim which, I respectfully suggest, might have been invoked in *Perera* v. *Vandiyar* was, indeed, described by Bowen, L.J., in *Birmingham, Dudley & District Banking Corporation* v. *Ross* (1888), 38 Ch. D. 295 (C.A.), as being "really as old, I will not say as the hills, but as old as the Year Books, and a great deal older"; the principle by which a grantor, having given a thing with one hand, is not to take away the means of enjoying it with the other.

R. B.

PRACTICAL CONVEYANCING—LX

ASSIGNMENT OF CLAIM FOR LOSS OF DEVELOPMENT VALUE

THE Town and Country Planning Bill is likely to be enacted, by the time these words appear, in a form not greatly different from that first introduced into Parliament and discussed at 96 SOL. J., pp. 771, 793, 809 and 839. There has been a slight amendment, however, to the rules regarding the assignment of a claim for loss of development value and as this topic is of importance to conveyancers it is proposed to draw attention to the points thought to be of most practical concern.

It will be remembered that, in the words of the White Paper (Cmd. 8699, para. 28), "the essence of the Government's proposals is to turn the 'payments for depreciation' of the 1947 Acts [*sic*] into compensation payments which will not be made until loss is actually sustained. They propose to pay for loss of development value up to 100 per cent. of the value of claims admitted by the Central Land Board as qualifying for payment from the £300m. fund. This will apply to compensation for compulsory purchase as well as to compensation for planning restrictions."

In order to see the conveyancing problem arising from these proposals in a proper perspective, we must note that comparatively little land is affected. There is no suggestion at present that any compensation will be paid except where a claim was made under the 1947 Act for loss of development value. If relief is to be given in cases of hardship where the making of a claim was overlooked, it will have to be by further legislation and no account of the possibility can be taken at this stage. Consequently, steps must be taken to deal with a claim in the course of a conveyancing transaction only if a valid claim was made in time and either it has been admitted by the Central Land Board or it is still outstanding for settlement.

The nature of the Government's proposals (which are to be embodied in legislation next session) is such that the right to compensation must run with the land. For instance, if compensation is to be paid on refusal of planning permission, it is clear that the right to the compensation should be vested in the owner for the time being of the land. The problem is largely caused by the fact that this desirable arrangement has not necessarily been the practice in the past. In fact, there is irony in the situation that, before the present proposals were made, Government policy was to encourage sale of land at existing use value on terms that the vendor retained any claim. Where this was done, the right to compensation was at once severed from the land.

The former rule was that an assignment of the right to payment in respect of a claim for loss of development value was void unless notice of it was given to the Central Land Board not later than 31st December, 1952 (Town and Country Planning Act, 1947, s. 64; Claims for Depreciation of Land Values Regulations, 1948). Any assignment made and notified to the Board in time remains valid whether or not the effect is to sever the claim from the land. Further, the new Town and Country Planning Bill (as amended) allows a renewed period in which any assignment *made before* 18th November, 1952 (the date on which the Bill was introduced), may be notified to the Central Land Board. This period is for one month after the passing of the Act. Therefore it is advisable to check any assignment made before 18th November last and give notice at once if that step was not taken before the end of 1952. Where due notice is not given in time, however, the assignment is not necessarily void, as its validity may be assured at any time by receipt of the written approval of the Central Land Board. Nevertheless, one should not rely on this as the Board may well seek to ensure that the claim passes with the land by use of its power to grant or refuse consent to the assignment.

Assignments made on or after 18th November, 1952, are treated differently. By that date the Government's proposals had been published and so the arrangements are designed to prevent severance of the claim from the land. The most simple case is where this does not occur. Where the assignment (*a*) only operates to transfer the beneficial interest in a claim made in respect of an interest in land to the person *beneficially* entitled to that interest in that land (or to an interest in which merger occurs or has occurred), or (*b*) does not operate to transfer any *beneficial* interest in the claim, then the assignment will be valid provided that notice in writing of it is given to the Central Land Board within one month of the making of the assignment or within one month after the passing of the Bill, whichever is the later. Thus, normally, the assignment will be valid without any further step than the simple notice to the Board. It is recognised that an assignment may be advisable even if these conditions are not complied with. Consequently, the Bill provides that in other cases assignments made on or after 18th November, 1952, are void unless and until they have been approved in writing by the Board. In deciding whether or not to grant approval, the Board are directed to ensure that so far as possible claims in respect of an interest in land enure for the benefit of the person holding that interest in the land.

It seems that the approval will not often be required, but it may sometimes be difficult to say whether the case is one in which the conditions are fulfilled in which notice of assignment is sufficient. If there is doubt, a contract for assignment should be provisional upon the Board's consent being obtained if it is required (Central Land Board Notice of 17th December, 1952: *ante*, p. 15).

There are no prescribed forms of notice or application for consent. "Any notice of assignment should contain such information as may enable the Board to identify the land and the interest therein to which the assignment relates. It is convenient that the date and reference number of the Board's determination of development value should be quoted. Any application for the Board's approval should contain similar information together with particulars of the

interest (if any) of the assignee in the land to which the claim relates, and the circumstances in which the Board's approval is sought" (see the Central Land Board Notice referred to above).

In the May issue of the *Law Society's Gazette* (at p. 195) there is a useful account of the present position (see also p. 339, *ante*), and in particular the Council of The Law Society have done a great deal to assist by preparing forms of assignment in consultation with the Central Land Board. As they have the approval of the Board most solicitors will wish to use them and so, with due acknowledgment, they are quoted in full.

The first form provides for the normal case of assignment of the whole of a claim. It may be used, for instance, where a vendor who claimed compensation in respect of Blackacre is selling the whole of that land and, in accordance with present policy, is assigning the benefit of the claim to the purchaser (who will then be able to take advantage of it if planning permission is refused or if the land is acquired from him compulsorily). It will be noted that two alternatives are stated in brackets. If the amount of the claim is already fixed it is convenient to state the sum. On the other hand, if the claim has not yet been settled, the assistance of the vendor may still be required in proof of it and so a covenant that he will do all desirable acts is added. The form, then, is as follows:—

> "The assignor hereby assigns to the assignee all rights vested in him in respect of his claim under Pt. VI of the Town and Country Planning Act, 1947, with regard to his interest in Blackacre [amounting to £] [and covenants that he will from time to time at the request and cost of the assignee do and concur in doing all such acts and things as may be necessary or desirable to secure that any such claim shall be assessed at the maximum possible amount]."

A likely complication is that a part only of the land which was the subject of one claim may be sold and so it may be desirable to assign the appropriate part of the claim only. The White Paper (Cmd. 8699, para. 42) recognised that the change in the conception of claims made it necessary to apportion them where they related to large areas of land which are split into smaller units. Legislation has not yet provided for the manner of apportionment, but as no claim will now be paid pending that legislation it is not necessary to say how the apportionment will be carried out. Consequently, The Law Society form deals with the difficulty in simple terms as follows:—

> "The assignor hereby assigns to the assignee all such rights vested in him in respect of his claim under Pt. VI of the Town and Country Planning Act, 1947, as may be found to be attributable under the provisions of future legislation to such part of his interest in Blackacre as he has transferred to the assignee [the development value of his interest in the whole of Blackacre having been assessed at £]."

No explanation is added to The Law Society's forms and the third (and last) is not easy to follow. It is in these terms:—

> "The assignor hereby assigns to the assignee all such rights vested in him in respect of his claim under Pt. VI of the Town and Country Planning Act, 1947, as are attributable to the part of the assignor's interest in Blackacre which he has assigned to the assignee, such apportioned part of the development value determined in respect of the claim amounting to £ ."

This seems to assume that an apportionment of the claim in respect of a greater area of land has already been carried out and that the value attributable to the part of the land assigned is already known. It follows that the form cannot be used at the present time as no apportionments can have been made. The contrast with the wording of the second form may be significant, although it is difficult to suggest a reason for the change of wording from "interest in Blackacre . . . he has *transferred*" to "interest in Blackacre . . . he has *assigned*." Apparently, this third form is intended to take the place of the second one when the intended permanent legislation has been passed.

Briefly, our conclusions are as follows: First, that difficulties in assignment of a claim for loss of development value will rarely arise. Unless a valid claim was made in time no action is now possible. Further, even if a claim has been admitted, it may not be necessary to bother about it on sale of the land. For instance, if the vendor has already developed the land pursuant to planning permission and paid a development charge he may retain his claim for compensation as the Government recognise that it should be met; alternatively, the claim might be transferred and the price for the property increased accordingly. Secondly, where assignment is advisable it will normally be in such circumstances that consent of the Central Land Board will not be essential; the time within which notice must be given and the contents of the notice are mentioned above. Thirdly, The Law Society's suggested forms of assignment are most useful; the second one illustrates how the problem of apportionment will work in practice. Probably the most frequent case for assignment will be where a claim was made and admitted in respect of a large area of land and plots are now being sold for building purposes. If there is any danger of compulsory purchase or refusal of planning permission then assignment of the apportioned claim is essential for the protection of the purchaser.

J. G. S.

HERE AND THERE

ART AND NATURE

If real life and nature so often seem to be imitating and even improving upon art it is (with all possible respect to the mystagogues) because all art which is viable is rooted in nature, real life and things experienced. A tree cannot grow with its roots in the air. Now, there are many different sorts of soil and there are episodes which, even if their locality was not disclosed, are as distinctively national, as different from the product of some other place, as the oak is different from the palm tree. The disappointed lover who plotted to destroy his rival by loading the heels of his military boots with explosives was obviously nourished in the tradition of high dramatic emotion that also produced Italian opera. And similarly, when we see a French film, we really are seeing a slice of French life, so that if you keep your eye on the court news from France (for court news is social history in its first fluid condition) you will find enough material to keep a film studio in stories from year's start to year's end. In the last few days there have been two particularly attractive plots, the better, perhaps, because it has the greater element of surprise, being the story of Henriette's mink coat and how it led to trover, conversion and the divorce court.

THE TALE OF THE MINK

Henriette was the good little wife of a tradesman from Aix-en-Provence, attractive and charming but, as it turned out, too good to be quite true. Her husband was doing well enough, but in a smallish way of business, and when a wealthy manufacturer of leather goods came into her life, the things which he could offer her had not hitherto ranked among the rewards of conjugal devotion. Their relationship proved so satisfactory that eventually his appreciation expressed itself in terms of a particularly opulent mink coat. But at domestic no less than national frontiers there are customs

barriers to be crossed, import licences to be considered, so Henriette hit upon a plan to get her acquisition through without too many embarrassing questions about what she had to declare. She got hold of an old suit-case and, having bundled the coat inside, deposited it at the left-luggage office of a railway station. The receipt she crumpled up, rubbed on the ground and stamped on and, when she thought it looked convincingly derelict, she showed it to her husband, said that she had found it in the street and, on the ancient principle that finding was keeping, persuaded him to go to the station and claim the deposited article, whatever it was. Obedient to her whim, he went; he brought in the case; he opened it in her presence and drew out a shaving brush, a broken down pair of slippers and an old suit of pyjamas. No, he had not collected the wrong case. It was Henriette who had made two elementary psychological slips. She had been too much preoccupied with her own affairs to keep an eye on her husband's. Nor had it occurred to her that a man who could be persuaded to steal a suit-case from a left-luggage office was not the most reliable custodian for a mink coat. Unobserved, he some time before had acquired a mistress of his own. Unobserved, he had now diverted the mink to her wardrobe. For Henriette, philosophic silence and resignation were out of the question. Peace talks were not a practical proposition. The road lay plain ahead to the divorce court. The main problem for her is, however, how to recover the mink from the other minx. An enjoyable time is certainly assured to the legal advisers to the parties. Did the spouses marry with community of property? Does the lady's previous denial of ownership estop her from asserting it now? Is it in accordance with public policy that she should succeed? And is there a French doctrine equivalent to our own "*Ex turpi causa non oritur actio*"? The men are out of the ring. The ladies will fight it out.

LIQUID ASSETS

PERHAPS artistically I ought to have kept Henriette till the last, for after the neat, well-rounded, provocative proportions of her story, the second case is bound to seem as bald and bare as an industrial documentary. Yet, if it has no love interest, it yet has human interest and very definite merit. In Northern France the great distillery of La Gogue produces and has long produced brandy in quantities literally incalculable. Now, a very great deal of successful business is based on acquiring and putting to good use marketable commodities which the owner, for some reason, is not employing to the full extent of their profit-earning capacity. Your asset is the "know how." Picture dealing and the second-hand book trade both depend to an enormous extent on the snapping up of unconsidered trifles. Similarly, in 1936, it occurred to an enterprising group of business men that they could find a profitable market for the unappreciated surplus of the brandy in the distillery. No one would be the worse off (for what you never notice you never miss) and they would be a lot better off. One of them owned a garage conveniently connected with the distillery by a disused tunnel. Another put up the money to build a pipe-line and, as in the case of so many other great and simple ideas, that relatively modest capital outlay was the foundation of their fortunes. For years the business flourished, all the more strongly because the profits were untapped either by the income tax or by the excise. Suitably bottled, the brandy was smuggled over the Belgian frontier, where a member of the group, who was a Belgian citizen, had no difficulty in disposing of it. All might yet have been well if the partners could have refrained from providing an illustration of the Marxist thesis of the self-destructive rivalries inherent in business enterprise. In 1951 two of the principals quarrelled and one, seceding from the rest, ran a new branch pipe-line to a private destination of his own. The extra drain was too much even for the resources of the distillery. Investigations were set afoot and this month at Hazebrouck, near Lille, seventeen Frenchmen and one Belgian found themselves in the dock charged with theft of the brandy. Their enterprise is in involuntary liquidation owing, paradoxically, to the drying up of their assets.

RICHARD ROE.

BOOKS RECEIVED

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The Strange Case of Alger Hiss. By The EARL JOWITT. 1953. pp. (with Index) 279. London: Hodder & Stoughton, Ltd. 20s. net.

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Guide to Government Orders. In force at 31st December, 1952. 1953. pp. ccviii and 1247. London: H.M.S.O. £4 4s. net.

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The Elements of Income Tax Law. Second Edition. By C. N. BEATTIE, LL.B., of Lincoln's Inn, Barrister-at-Law. 1953. pp. xxxii and (with Index) 208. London: Stevens and Sons, Ltd. 25s. net.

Notable British Trials Series, Volume 78: The Trial of John George Haigh. Edited by LORD DUNBOYNE, of the Middle Temple, Barrister-at-Law. 1953. pp. 271. London, Edinburgh, Glasgow: William Hodge & Co., Ltd. 15s. net.

S.I. Effects. A table recording the effect of Statutory Instruments on previous Statutory Rules and Orders and Statutory Instruments as at 31st December, 1952. 1953. pp. 138. London: H.M.S.O. 5s. net.

Numerical Table, S.R. & O. and S.I. as at 31st December, 1952. 1953. pp. 196. London: H.M.S.O. 7s. 6d. net.

Stephen's Commentaries on the Laws of England. Twenty-first Edition. Supplement, 1953. By L. CRISPIN WARMINGTON, Solicitor of the Supreme Court (Honours). 1953. pp. 53. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

OBITUARY

MR. R. B. ATTLEE

Mr. Robert Bravery Attlee, solicitor, died on 14th May, aged 81. He was a Past-Master of the Clothworkers' Company, and was the eldest brother of the Right Hon. C. R. Attlee.

MR. A. W. GADSDON

Mr. Anthony Ward Gadsdon, solicitor, of Skegness and Spilsby, died on 4th May, aged 46. He was admitted in 1930.

MR. G. T. SAUNDERS-JACOBS

Mr. George Tarlton Saunders-Jacobs, solicitor, of London Wall, died on 11th May. He was admitted in 1928.

MR. W. WORTHINGTON

Mr. Walter Worthington, solicitor, of Bridlington, died on 4th May, aged 80. Before coming to Bridlington in 1937, he was in practice in Hull. He was admitted in 1893.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CEYLON: CITIZENSHIP LEGISLATION: CONSTITUTIONAL VALIDITY

Pillai *v.* Mudanayake and Others

Lord Normand, Lord Oaksey, Lord Tucker, Lord Asquith of Bishopstone and Lord Cohen. 11th May, 1953

This was an appeal by G. S. N. K. Pillai, a member of the Indian Tamil community in Ceylon, from an order of the Supreme Court of Ceylon, dated 28th September, 1951, which quashed an order whereby the revising officer for the electoral district of Ruwanwella directed the registering officer of the district to include the appellant's name in the register of electors for 1950. The appellant, who immigrated into Ceylon twenty-two years ago from India, where he was born, was a British subject who had settled down and become domiciled in Ceylon and whose name, from 1935 until the 1950 register was prepared, appeared in the electoral register. The appellant contended that the Citizenship Act, 1948, of Ceylon, which provided, *inter alia*, that a person born outside Ceylon should have the status of a citizen of Ceylon by descent if his father and paternal grandfather or the latter and his paternal great grandfather were born in Ceylon, and the Parliamentary Elections Amendment Act, 1949, which provided that a person who was not a citizen was not qualified for entry on any register of electors, were *ultra vires* the Ceylon Legislature as being repugnant to s. 29 (2) (*b*) of the Ceylon (Constitution and Independence) Order in Council, 1946, as amended, which provided that Parliament might make laws for the peace, order and good government of the island, but that " (2) no such law shall . . . (*b*) make persons in any community liable to disabilities or restrictions to which persons of other communities . . . are not made liable." It was alleged for the appellant that the impugned legislation had the effect of disenfranchising a high percentage of the Indian Tamil community in Ceylon.

LORD OAKSEY, giving the judgment, said that the Citizenship Act of 1948 was in pith and substance legislation on citizenship and that that Act and the Franchise Act of 1949 were not intended to, and did not, impose disabilities on Indian Tamils to which other communities were not liable within the meaning of s. 29 (2) (*b*) of the Constitution Order in Council, and were, therefore, *intra vires*. It was a perfectly natural and legitimate function of the legislature of a country to determine the composition of its nationals. Standards of literacy, of property, of birth or of residence were standards which a legislature might adopt in legislation on citizenship, and though they might operate to exclude the illiterate, the poor and the immigrant to a greater degree than they excluded other people, those standards did not create disabilities in a community as such, since the community was not bound together as a community by its illiteracy, its poverty or its migratory character, but by its race or its religion. The migratory habits of the Indian Tamils were facts which were directly relevant to the question of their suitability as citizens of Ceylon, but had nothing to do with them as a community.

There might be circumstances in which legislation, though framed so as not to offend directly against a constitutional limitation of the power of the legislature, indirectly achieved the same result, in which case it would be *ultra vires*. The legislative plan in relation to citizenship looked at as a whole, however, indicated that the Ceylon Legislature did not intend to prevent Indian Tamils from attaining citizenship provided that they were sufficiently connected with the island, for by the Indian and Pakistani Residents (Citizenship) Act, 1949, to which their lordships' attention was subsequently drawn, an Indian Tamil could obtain citizenship by registration and thus protect his descendants provided that he had a certain residential qualification.

Their lordships would humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the appeal.

APPEARANCES: *D. N. Pritt*, Q.C., *Frank Gahan*, Q.C., *S. Canagarayar* and *S. Amerasinghe* (*Lee & Pembertons*); *Sir Hartley Shawcross*, Q.C., *Sir Frank Soskice*, Q.C., *Dingle Foot*, *Walter Jayawardene* and *Biden Ashbrooke* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 1142**

COURT OF APPEAL

RATES AND RATING: SEA DEFENCE RATE: WHETHER DEDUCTIBLE FROM GROSS ANNUAL VALUE

Havant and Waterloo U.D.C. *v.* Payne and Another

Denning and Jenkins, L.JJ., and Vaisey, J. 24th April, 1953

Appeal from the Lands Tribunal.

The Rating and Valuation Act, 1925, provides by s. 22 (1): " . . . the rateable value of a hereditament shall be ascertained as follows:—(*a*) . . . there shall be deducted from the gross value [a certain sum provided by Sched. II] . . . and also, in the case of a hereditament subject to any rate, charge or assessment made by any commissioners of sewers or other like authority in respect of any drainage, wall, embankment or other work . . . such further amount as represents the average annual amount of that rate, charge, or assessment, and the gross value as so reduced is in this Act referred to as the net annual value." An urban district council was empowered by a private Act of Parliament to build a sea wall and to recover the cost of the work from the owners of land within an area marked out by the Act by levying on them an annual sea defence rate. The local valuation court determined the assessment of a hereditament within the prescribed area and, in arriving at the rateable value, deducted from the gross value not only the statutory deduction under Sched. II to the Act, but also a sum representing the average annual amount of the sea defence rate payable by the owner of the hereditament. The local court's decision was confirmed by the Lands Tribunal, which held that the sea defence rate was " a rate, charge or assessment " within the meaning of s. 22 (1) (*a*) of the Act, and was therefore a legitimate deduction. The council appealed.

DENNING, L.J., said that the effect of the decision was to reduce the net annual value of the premises in question from £60 to £51, as £9 was the average amount of the sea defence rate. Accordingly, the ratepayer would pay £1 7s. less in his total rates than if he were not subject to the sea defence rate; he was paying nothing for the sea wall, and was getting that bonus at the expense of other ratepayers. That could not have been the intention of Parliament when they passed the local Act. The decision was wrong, because an ordinary local rating authority was not a " commissioner of sewers or other like authority " within the meaning of s. 22 (1) (*a*). That expression referred to *ad hoc* authorities entrusted with the specific task of draining a district or controlling a catchment area, or the like. In any conflict between the private Act and the public Act, the former should prevail; but it had been the intention of Parliament that the sea defences were to be paid for by the owners in the particular area.

JENKINS, L.J., and VAISEY, J., agreed. Appeal allowed.

APPEARANCES: *Michael Rowe*, Q.C., and *W. L. Roots* (*Lees and Co.*, for *B. R. W. Gofton*, Clerk to Havant and Waterloo U.D.C.); *Maurice Lyell* (*Solicitor of Inland Revenue*); *J. P. Widgery* (*Arthur S. Joseph & Cates*, for *MacDonald, Jacobs and Oates*, Petersfield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 1119**

FACTORY: TRANSMISSION MACHINERY: WHETHER IN MOTION

Cummings *v.* Richard Thomas & Baldwins, Ltd.

Singleton, Hodson and Morris, L.JJ. 24th April, 1953

Appeal from Pearson, J.

By ss. 13 and 14 of the Factories Act, 1937, every part of transmission machinery and every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe as it would be if securely fenced. By s. 16 all fencing or other safeguards must be maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use. The plaintiff, a fitter employed in the factory of the defendants, suffered the loss of

a little finger when assisting another workman in making adjustments to an electric power-driven Waldrick grinding machine. The motive power of the machine had been cut off, and when it became necessary to rotate the face plate for the purpose of carrying out the work on which he was engaged, the plaintiff pulled on one of the belts through which electric power is normally transmitted. In so doing the plaintiff's finger was crushed between the belt and a pulley. He sued his employers for damages, alleging that the machine was transmission machinery and that the defendants had been guilty of a breach of their statutory duty to fence and guard the dangerous parts of the machine while in motion. The defendants denied any breach of statutory duty, contending that the machine, being dismantled and its motive power having been cut off, was not transmission machinery within the meaning of s. 13, and was not in motion within the meaning of s. 16. Pearson, J., gave judgment for the plaintiff. The defendants appealed.

SINGLETON, L.J., said that he could not accept the defendants' contention that the belt and pulley were not transmission machinery, or dangerous machinery, or machinery of either class in motion at the time of the accident. They were transmission machinery, although power had been cut off for some time, and did not thereby cease to be transmission machinery that was presumed to be dangerous, and had to be fenced and guarded, and there might be considerable danger if part of it was moved by hand. Once it was established that something was transmission machinery, it was not necessary to show that the motion of it was caused by mechanical energy. Accordingly, it was transmission machinery, and was in motion, so that s. 16 applied and the defendants were in breach. If it was not transmission machinery it was dangerous machinery, and the defendants were, again, in breach. The appeal should be dismissed.

HODSON, L.J., agreed.

MORRIS, L.J., agreed that the belt and pulley constituted transmission machinery, but would have allowed the appeal on the ground that it was unreal to hold that it was in motion. Appeal allowed. Leave to appeal.

APPEARANCES: *H. I. Nelson*, Q.C., and *G. Thomas* (*Kenneth Brown, Baker, Baker*, for *Gee & Edwards*, Swansea); *M. Everett*, Q.C., and *G. Rees* (*W. H. Thompson*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 1104**

APPLICATION FOR NEW LEASE: SHOPKEEPER TO SHOW TITLE AS "TENANT" THROUGHOUT QUALIFYING PERIOD

Corsini and Another *v.* Montague Burton, Ltd.

Evershed, M.R., Birkett and Romer, L.JJ. 24th April, 1953

Appeal from Southend County Court.

The plaintiffs were restaurateurs at 13 High Street, Southend-on-Sea, holding under a four-year lease which expired in September, 1952. They had acquired the lease, with the business, in 1949 from two persons who had themselves carried on the business in the premises since about 1945, at first by arrangement with the then tenant, and after 1948 as tenants of the premises. The plaintiffs claimed that, on the termination of the lease, they were entitled by virtue of ss. 4 (1) and (5) of the Landlord and Tenant Act, 1927, to a new lease, for, they alleged, the business had been carried on for a period of at least five years either by themselves or by their predecessors in title, and that, as a result, goodwill had become attached to the premises which had enhanced the rental value. The county court judge held that they did not qualify because they and their predecessors in title had not throughout the qualifying period been carrying on the trade in the capacity of tenants. The plaintiffs appealed.

EVERSHED, M.R., said that, in order to maintain a claim, an applicant must prove either that he as tenant had, or that his predecessors in title in the capacity of tenants had, carried on the business in the premises for five years, or that in the aggregate they had carried on the business for that period. Here the tenant could only show title as tenant for four years and, accordingly, his claim failed. "Predecessors in title" in s. 4 (1) meant persons who had the title to the premises to which the tenant succeeded (see *Williams* v. *Portman* [1951] 2 K.B. 948; [1951] 2 T.L.R. 526; 95 SOL. J. 576; *Pasmore* v. *Whitbread and Co., Ltd.* [1953] 2 W.L.R. 359; *ante*, p. 111).

BIRKETT, and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *P. A. W. Merriton* (*Conway & Conway*); *C. G. A. Cowan* (*Warren, Murton & Co.*, for *H. A. Dodman*, Leeds).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 1092**

DESERTION: MAINTENANCE AGREEMENT NO BAR TO DIVORCE

Crabtree *v.* Crabtree

Denning and Hodson, L.JJ. 29th April, 1953

Appeal from Judge Rewcastle sitting as special commissioner.

A husband deserted his wife in 1947 and refused to return to her. On 3rd January, 1948, the parties entered into a written agreement which recited that, having for some time lived separate and apart and the wife having the custody of the child of the marriage, the husband agreed that he would during the joint lives of himself and his wife, "if they shall so long live separate and apart from each other," pay to her weekly sums for the support and maintenance of herself and of the child until it attained the age of sixteen. Later, the wife sought a decree of dissolution of the marriage on the ground of the husband's desertion. The commissioner (Judge Rewcastle) held that the agreement of 1948 was by implication a separation agreement which put an end to the desertion, and was a bar to a petition on that ground. The wife appealed.

DENNING, L.J., said that if the agreement was one binding the parties to live separate and apart it would stop the desertion running; but if it was only an agreement to pay maintenance it would not bar a petition on the ground of desertion. In *Long* v. *Long* [1940] 4 All E.R. 230, at p. 233; 57 T.L.R. 165, Lord Greene, M.R., had recognised that there might be agreements by which on or after the separation the parties could regulate the financial position between them without bringing the desertion to an end. On a true interpretation, he thought this agreement was such an agreement as Lord Greene had in mind. It was confined to maintenance. The words, "if they shall so long live separate and apart," simply defined the duration of the payment and did not amount to a bargain binding them to live separate and apart. It did not stop the desertion from running. The petition should be granted and a decree *nisi* pronounced.

HODSON, L.J., agreed. The words which were thought to stand in the way of the petitioner were on their true construction merely a conditional clause defining the duration of the payment, and did not imply a stipulation that the petitioner agreed to the respondent living apart from her, and they came, therefore, within the exception contemplated by Lord Greene, M.R.

APPEARANCES: *Laurence A. Pratt* (*Wood, Nash & Co.*, for *Wilkinson, Woodward & Ludlam*, Halifax); *J. A. Petrie* (*Williamson, Hill & Co.*, for *Clarkson, Thomas & Hanson*, Halifax).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 708**

COSTS: LUMP SUM CHARGE FOR REMUNERATION AND DISBURSEMENTS

***In re* a Solicitor; *In re* a Taxation of Costs**

Evershed, M.R., Birkett and Romer, L.JJ. 30th April, 1953

Appeal from Vaisey, J.

A firm of solicitors acting in the administration of an estate delivered to one of the executors, a Mr. East, a document entitled a statement of receipts and payments, which showed on one side disbursements on rates, estate duty, etc., and a payment of over £1,000 to another firm of solicitors in connection with the surrender of several leases. That account ended with an item, "legal charges and disbursements on extracting probate, administration of estate. Assents and negotiating surrender of . . . leases, £735"—the last few words referring to the matter in which payment of over £1,000 had been made to the other firm. On the other side was an account of receipts which fell short of the outgoings by £260 9s. 7d. The executor paid the balancing charge, but some three years later he queried the charges and asked for details. The solicitors prepared an itemised list showing that they had charged less than they were entitled to charge under the Solicitors Act, 1932, and orders made thereunder. The applicants, however, took out a summons asking that the account be taxed or, alternatively, that the solicitors might be ordered to deliver a detailed bill of charges pursuant to the Solicitors' Remuneration (Gross Sum) Order, 1934. Vaisey, J., dismissed the application and the applicants appealed.

EVERSHED, M.R., said that the exception made by the Solicitors' Remuneration (Gross Sum) Order, 1934, relating to non-contentious work covered by cl. 2 (*c*) of the Solicitors' Remuneration Order, 1882 (General Order of 1882), applied to remuneration as distinct from disbursements. The order of 1934 did not authorise the delivery of a lump sum charge including together,

and without distinguishing between the two, both profit costs and disbursements, and in the absence of some express authority so to do, a solicitor could not, under the Solicitors Act, 1932, or under any other order, justify his having done so. The inclusion in the document delivered by the solicitors of the item for "legal charges and disbursements . . . £735," was not a charge which fell within the terms of, and could not be justified by reference to, the order of 1934. Accordingly, no bill had, in fact, been delivered and inasmuch as on the facts the recipients had not, by their conduct, deprived themselves of the right to have a proper bill, the court, in the exercise of its discretion, would order that an itemised bill should be delivered notwithstanding that the recipients had, in fact, paid the bill and had allowed about three years to elapse before objecting to the charge. *In re a Solicitor* [1947] Ch. 274; 63 T.L.R. 249; 91 SOL. J. 192 was distinguishable on the facts.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *R. Cozens-Hardy Horne* (*Pennington & Son* for *Church, Bruce & Co.*, Gravesend); *J. P. Hunter-Brown* (*Henry Boustred & Sons*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 1098

ADMISSIBILITY OF FRESH EVIDENCE ON APPEAL IN MATRIMONIAL CAUSE: RELEVANCE IN SUBSEQUENT CUSTODY PROCEEDINGS

Corbett *v.* Corbett

Evershed, M.R., Birkett and Romer, L.JJ. 4th May, 1953

Motion for leave to call further evidence on appeal from Collingwood, J.

Collingwood, J., dismissed a husband's petition for dissolution of marriage on the ground of his wife's adultery with the co-respondent (which she admitted in her discretion statement) and had granted a decree on the wife's prayer on the ground of the husband's cruelty, which he held had conduced to her adultery. The husband, having appealed, served a notice of motion in the appeal asking leave to file further evidence with a view to showing that the wife's story, notwithstanding that the judge had believed it, was untrue in material respects.

EVERSHED, M.R., said that the general rule of the Court of Appeal laid down in *Shedden* v. *Patrick* (1869), L.R. 1 Sc. & D. 470, and followed in many cases was that, it being in the public interest that there should be an end to litigation, fresh evidence on appeal was not admissible unless two conditions were satisfied. The first was that the new evidence was not available at the trial to the party seeking to use it, or that reasonable diligence would not have made it so available. The second condition was that fresh evidence, if true, would have had, or have been likely to have had, a determining influence upon the decision of the court below. The general rule applied in all its strictness to matrimonial cases. There might be exceptional cases, and if it appeared plainly that the court had been deceived (and in particular, had been deceived as regards a discretion statement) an exception should be made to the rule which would otherwise be applicable. The existence of the office of the Queen's Proctor *prima facie* covered a matrimonial case in the interests of the State. If there was evidence, albeit evidence that one party or the other could with proper diligence have produced before, and if the Queen's Proctor was able to show that the decree was obtained upon some false evidence, he was there to protect the public interest by his intervention and to see that the process was not abused. *Prima facie* the interests of the State would be protected in that way and for that reason, and though there might be exceptions to the general rule, they would be very rare. His lordship referred to *Winter* v. *Winter* [1942] P. 151; [1942] 2 All E.R. 390, and *Prince* v. *Prince* [1951] P. 71; [1950] 2 All E.R. 375.

BIRKETT and ROMER, L.JJ., agreed, and said (EVERSHED, M.R., subsequently agreeing) that in proceedings relating to the custody of the children of a marriage, evidence should not be excluded merely because it did not form part of the material on which the issues of divorce had been determined. To exclude evidence on that ground would prevent the court from discharging its paramount duty in matters relating to the care and custody of the children, namely, what directions would best serve the interests of the children. In its examination of this matter, the court was bound to inquire into all relevant circumstances and a circumstance, if otherwise material, was not to be regarded as irrelevant merely because it was not introduced into the divorce proceedings. Application refused. Appeal adjourned.

APPEARANCES: *J. E. S. Simon*, Q.C., and *Daly Lewis* (*Blakeney and Marsden Popple* for *Cyril E. Wheeler*, Brighton); *Sir Charles Doughty*, Q.C., and *D. C. Humphreys* (*Lee, Bolton & Lee*, for *Roythorne & Co.*, Spalding).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 1124

COMPANY IN VOLUNTARY LIQUIDATION: APPLICATION FOR PUBLIC EXAMINATION OF DIRECTOR

***In re* Campbell Coverings, Ltd.**

Evershed, M.R., Denning and Romer, L.JJ. 5th May, 1953

Motion.

The official receiver appointed by the Board of Trade to investigate the affairs of a company in voluntary liquidation applied *ex parte* to the court for an order that one of the former directors of the company be directed to attend the court for a public examination. The application was refused by Roxburgh, J., on the ground that the applicant had not submitted to the court the reports which would have been required under s. 236 of the Companies Act, 1948, in the case of a company being wound up by the court before such an order could be made. The applicant then applied *ex parte* to the Court of Appeal under Ord. 58, r. 10.

EVERSHED, M.R., said that the application should be refused. The submission of a preliminary and further report pursuant to s. 236 of the Companies Act, 1948, was not, as Roxburgh, J., had held, in the case of a company in voluntary liquidation, a condition precedent to conferring on the official receiver, under s. 334, the powers of investigating the affairs of the company which in the case of a company being wound up by the court would be exercised by the court. But the powers which the court could confer under s. 334 would not enable the receiver to conduct a public examination, nor could the court under that section, on the application of the official receiver of the Board of Trade, set in motion the procedure for either a public or a private examination. An application by the liquidator, a contributory or a creditor under s. 307 would seem the appropriate procedure, but the application should be supported by information equivalent to that required in the case of a compulsory winding up.

DENNING and ROMER, L.JJ., agreed. Application refused. Decision of Roxburgh, J., affirmed, but on a different ground.

APPEARANCE: *D. B. Buckley* (*Solicitor to the Board of Trade*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 1135

CHANCERY DIVISION

INCOME TAX: AUTHOR: COMPENSATION FOR CANCELLATION OF FILM CONTRACT

Household *v.* Grimshaw

Upjohn, J. 21st April, 1953

Case stated.

This was an appeal from a decision of the Commissioner for the Special Purposes of the Income Tax Acts affirming an assessment on the appellant under Case II of Sched. D, which included as part of his income for the year 1946–47 a sum of £2,700 net received by the appellant for the cancellation of a film contract. The appellant, who was an author, by a contract made in 1943 with a film company, agreed that on his leaving the army, he would serve the company as a script writer for twelve consecutive weeks in three successive years, and that the company should have an option to purchase all novels written by him during the currency of the agreement. He received £10 a week from July, 1943, until the employment with the company began, and £200 a week during the employment. The appellant worked for the company from October, 1945, for one period of twelve weeks, after which time the contract was terminated by an agreement between the parties dated 11th September, 1946. Under that agreement the appellant received £3,000 in consideration of all his claims against the company under the agreement of 1943. He also received five shillings in consideration of his granting the company an option to purchase the photoplay rights of the next three novels written by him. The appellant was assessed to tax under Case II of Sched. D in respect of the £3,000 (less agents' fees of £300), on the ground that it arose from his vocation as an author. The appellant disputed the assessment, contending that the contract was a contract of employment assessable under Sched. E; alternatively, that if it arose from his earnings as an author it was a capital payment.

UPJOHN, J., said that it was conceded in this court that, if the appellant established that the remuneration was assessable under Sched. E, having regard to *Henley* v. *Murray* [1950] 1 All E.R. 908, the case must be concluded in favour of the appellant. But the Crown reserved the right to challenge that authority should this case go higher. The appellant had submitted that this was a contract of employment, wholly outside the normal scope of an author, alternatively, that it was severable into two distinct parts: £200 a week being consideration for performing the services for the twelve weeks in each year, and the payment of £10 a week from July, 1943, onwards and the other provisions, if the option were exercised, being the consideration if the company exercised the option. He could not accept the appellant's submission without evidence as to what was the scope of an author. It seemed clear to him that the consideration of £200 a week given by the company was one consideration in respect of the appellant's services and option grant. This could not be construed as a contract of employment assessable under Sched. E; it was a contract entered into by the author partly to give an option on his activities as an author and partly to give services for some weeks in any year; it was not severable and had been rightly assessed under Sched. D. No clear rule appeared to be laid down where a contract was terminated in the course of carrying on a trade or profession assessable under Case II of Sched. D whether the compensation for the termination of such a contract was a capital receipt. Although this contract provided lucrative employment for three months of the year, it could not be regarded as a capital asset as in *Barr, Crombie & Co.* v. *C.I.R.* (1945), 26 T.C. 406. The capital asset which the appellant had was his own brain, talent and flair as author and not this agreement. Accordingly, the appeal failed.

APPEARANCES: *H. M. Allen* (*Lovell, White & King*); *Geoffrey Cross*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 710

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bill received the Royal Assent on 14th May:—
Iron and Steel

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

British Transport Commission Bill [H.C.] [12th May.
Licensing Bill [H.L.] [13th May.

To consolidate certain enactments relating to justices' licences for the sale by retail of intoxicating liquor and to the registration of clubs and to matters connected therewith with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

London County Council (Money) Bill [H.C.] [12th May.
Navy and Marines (Wills) Bill [H.C.] [12th May.
Saint Oswald Estate Bill [H.L.] [14th May.
West Bridgford Urban District Council Bill [H.C.] [12th May.

Read Second Time:—

Accommodation Agencies Bill [H.C.] [14th May.
Auxiliary Forces Bill [H.L.] [12th May.
Coastal Flooding (Emergency Provisions) Bill [H.C.] [14th May.
Enemy Property Bill [H.L.] [12th May.

Read Third Time:—

Belper Urban District Council Bill [H.C.] [13th May.
Cheshire County Council Bill [H.L.] [12th May.
Huddersfield Corporation Bill [H.L.] [12th May.
Tees Conservancy Superannuation Scheme Bill [H.C.] [13th May.
White Fish and Herring Industries Bill [H.C.] [14th May.

In Committee:—

Pharmacy Bill [H.C.] [14th May.
Road Transport Lighting (Rear Lights) Bill [H.C.] [14th May.

B. DEBATES

On a motion to approve the **Principal Probate Registry (Non-Contentious Business) (Canterbury Sub-Registry) Order, 1953,** the LORD CHANCELLOR said the order would amend the scheme of district probate registries which was established under s. 108 and Sched. II of the Supreme Court of Judicature (Consolidation) Act, 1925.

The Canterbury Sub-Registry had been closed in 1940 on account of disturbance by enemy aircraft and lack of manpower. He was satisfied that it should now be reopened. The motion was approved. [12th May.

On the second reading of the **Accommodation Agencies Bill,** LORD SILKIN drew attention to subs. (3) of cl. 1: "A person being a solicitor shall not be guilty of an offence under this section by reason of his demanding or accepting payment of any remuneration in respect of business done by him as such." He would have thought that that was self-evident and wanted to know why these words were put in the Bill. Why not put in a provision about barristers or engineers, or members of any other profession, to say that as long as they were doing the work of their profession they were not committing an offence?

The point was not dealt with by LORD MANCROFT, who replied to the debate. [14th May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Bradford Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [14th May.

To confirm a provisional order made by the Minister of Transport under the Bradford Corporation Act, 1910, relating to Bradford Corporation trolley vehicles.

Land Drainage (Surrey County Council (Rive Ditch Improvement)) Provisional Order Bill [H.C.] [13th May.

To confirm a provisional order made by the Minister of Agriculture and Fisheries under the Surrey County Council Act, 1936, for the execution of works for the improvement of the Rive Ditch in the County of Surrey and for other purposes.

Walsall Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [14th May.

To confirm a provisional order made by the Minister of Transport under the Walsall Corporation Act, 1925, relating to Walsall Corporation trolley vehicles.

Read Second Time:—

Hospital Endowments (Scotland) Bill [H.L.] [12th May.
Runcorn-Widnes Bridge Bill [H.L.] [11th May.
Therapeutic Substances (Prevention of Misuse) Bill [H.L.] [13th May.
Warkworth Harbour Bill [H.L.] [11th May.

Read Third Time:—

Births and Deaths Registration Bill [H.L.] [14th May.
Bromley Corporation Bill [H.C.] [15th May.
Education (Miscellaneous Provisions) Bill [H.C.] [14th May.

B. QUESTIONS

WEINMAN *v.* MORETON (LEGAL AID)

The ATTORNEY-GENERAL said he had seen newspaper reports of the remarks made by the learned judge in giving judgment in *Weinman* v. *Moreton* that the case should never have been brought. He thought he should point out that those reports omitted to state that the judge also said that no blame attached to the committee which had granted legal aid.

It was not possible to say what charge there would be on public funds until the costs had been taxed; but as legal aid was not granted to the plaintiff until immediately before the hearing of the action, he did not think it would be very large. [11th May.

INLAND REVENUE *v.* TATE AND LYLE (BILL OF COSTS)

Mr. R. A. BUTLER stated that the successful defendants' bill of costs had not yet been received. The Revenue costs were estimated at about £580. [12th May.

INCOME TAX (REPAIRS ALLOWANCE)

Mr. R. A. BUTLER said he was aware of the fact that to obtain increased repairs allowances householders had to produce bills and give detailed accounts of the repairs and often had to employ accountants for the purpose. He would, however, rather await the decision of the Royal Commission on Income Tax on this point. [12th May.

REPAIRS NOTICES (ENFORCEMENT)

Asked by Mr. ISAACS what power his regulations gave to local authorities, which had served notice on an owner of property to carry out repairs necessary to bring houses under his control into a sanitary condition and made fit for human habitation, to ensure that, in the interest of public health, the necessary work was executed in compliance with the notice, Mr. HAROLD MACMILLAN said local authorities had power to require repairs under s. 9 of the Housing Act, 1936, and s. 93 of the Public Health Act, 1936, both of which sections authorised them if necessary to carry out the work themselves and recover the cost from the owner or person responsible. They could also take over the property in certain cases. [12th May.

ESTATE DUTY (VALUATION CONCESSION)

In reply to Mr. PETER FREEMAN, who asked whether he was aware that district valuers were insisting on taking the replacement value of property instead of the pre-war value of property in accordance with the statement made in the House of Commons on 18th May of 1944, Mr. BOYD CARPENTER issued the following statement :—

"The statutory basis of valuation for estate duty is the price which the property would have fetched in the open market at the date of death. In the case of a house owned and occupied by the deceased at that date this would be the full market value with the benefit of vacant possession.

The effect of the concession announced on 18th May, 1944, in the cases to which it applies, is to exclude from that value 'any increase . . . above the pre-war value in so far as it could only be realised by a sale with vacant possession.'

The concession does not substitute the pre-war value of property for its value at the date of death. It does not exclude such value as there was in vacant possession pre-war. Nor does it exclude increases of value due to causes other than sale with vacant possession, e.g., a rise in the value of property due to the change in the value of money generally since before the war. The only element of value to be excluded where the concession applies is that which represents the degree to which vacant possession at the date of death inflated value more than it did pre-war; no other factor which would influence the value is to be disregarded.

There has been no change in the Board of Inland Revenue's interpretation of the concession, which has from the first been interpreted as described above. As to the method of valuation, it would be inappropriate to lay down a formula to be applied in all cases in which the concession is available, since the value of the property with the benefit of the concession is capable of being arrived at in a variety of ways. There is, however, no reason why regard should not be had in appropriate cases to cost of replacement less depreciation as one of the factors in estimating value." [14th May.

GOODS VEHICLES (METROPOLITAN POLICE ACTION)

Sir HUGH LUCAS-TOOTH said the Metropolitan police had standing instructions to require the production of the records of work of a goods vehicle driver whenever they had occasion to inspect his driving licence, and they took such action as might be called for if breaches of the law were disclosed. In 1952, 208 prosecutions were taken in the Metropolitan police district under s. 16 of the Road and Rail Traffic Act, 1933, and 1,547 persons were cautioned by letter and a similar number warned orally for failure to keep such records or to cause them to be kept. No prosecutions were undertaken under s. 19 of the Road Traffic Act, 1930; suspected or alleged breaches of this section were reported to the licensing authority for such action as that authority might consider necessary. [14th May.

STATUTORY INSTRUMENTS

Bacon (Rationing) Order, 1953. (S.I. 1953 No. 793.) 5d.
Biscuits (Licensing) (Revocation) Order, 1953. (S.I. 1953 No. 791.)
Cheese (Amendment) Order, 1953. (S.I. 1953 No. 797.)
County of West Suffolk (Electoral Divisions) Order, 1953. (S.I. 1953 No. 798.)
Exchange Control (Authorised Depositaries) (Amendment) (No. 3) Order, 1953. (S.I. 1953 No. 788.)
Fats and Cheese (Rationing) Order, 1953. (S.I. 1953 No. 794.) 6d.
Food Rationing (General Provisions) Order, 1953. (S.I. 1953 No. 792.) 11d.
Importation of Raw Cherries (Scotland) Order, 1953. (S.I. 1953 No. 786 (S. 69).) 6d.
Laich of Moray Water Board (Duffus Water Undertaking) Water Order, 1953. (S.I. 1953 No. 777 (S. 67).)
Leasehold Property (Temporary Provisions) (Shops) Regulations, 1953. (S.I. 1953 No. 783.) 5d.

These regulations, which came into operation on 11th May, revoke the similarly named regulations of 1951 (S.I. 1951 No. 1215) and prescribe a new form of notice to elect to be served by a landlord on a tenant under s. 11 (2) of the Leasehold Property (Temporary Provisions) Act, 1951, as extended by the Leasehold Property Act and Long Leases (Scotland) Act Extension Act, 1953.

London Traffic (Prescribed Routes) (No. 15) Regulations, 1953. (S.I. 1953 No. 784.)
Meat (Rationing) Order, 1953. (S.I. 1953 No. 795.) 5d.
North West Wales River Board (Transfer of Powers of the Borth Drainage Board) Order, 1953. (S.I. 1953 No. 801.)
North West Wales River Board (Transfer of Powers of the River Conway Drainage Board) Order, 1953. (S.I. 1953 No. 800.)
Parrots and Miscellaneous Birds (Prohibition of Importation) Amendment) Order, 1953. (S.I. 1953 No. 778.)
Progressive Verticillium Wilt of Hops Order, 1953. (S.I. 1953 No. 776.) 5d.
Representation of the People (Scotland) Regulations, 1953. 5d.
Road Haulage Wages Council Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 781.) 5d.
Stamped or Pressed Metal-Wares Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 787.) 8d.
Stopping up of Highways (Kent) (No. 3) Order, 1953. (S.I. 1953 No.767.)
Stopping up of Highways (Kent) (No. 4) Order, 1953. (S.I. 1953 No. 768.)
Stopping up of Highways (Kent) (No. 5) Order 1953, (S.I. 1953 No. 769.)
Stopping up of Highways (London) (No. 6) Order, 1953 (S.I. 1953 No. 766.)
Stopping up of Highways (Wigan) (No. 1) Order, 1953 (S.I. 1953 No. 789.)
Sugar (Rationing) Order, 1953. (S.I. 1953 No. 796.) 5d.
Trading with the Enemy (Enemy Territory Cessation) (France) Order, 1953. (S.I. 1953 No. 780.)
Troon Water Order, 1953. (S.I. 1953 No. 785 (S. 68).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless stated otherwise, is 4d., post free.]

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL REPORT

The sixty-fourth annual general meeting of the Society was held at Oyez House, Norwich Street, Fetter Lane, on Tuesday, 19th May, Mr. Kenneth Davey Cole in the chair.

The chairman's statement circulated with the report and accounts said :—

I should like to begin this statement by referring to Sir Alan Gillett who resigned the office of chairman in January of this year. Sir Alan became chairman in 1945 at a time of great difficulty. He devoted himself to the re-establishment of the Society's business after the war and, although during the last year or two he has suffered some ill-health, he never spared himself where the Society's interests were involved. We all owe him a great debt of gratitude and are glad that he is willing to continue as a director.

You will see that, in common with many other businesses, the year's results compare unfavourably with the high figures reached

in 1951. An indication of the change in trading conditions was given at this time last year and also when the interim dividend was paid last October. Early in 1952, prices of paper began to fall, supplies became plentiful and competition increased. Although there was no appreciable fall in the volume of our business, the value of sales fell by some 10 per cent. This was accompanied by a reduction in the overall margin of profit. Our stocks of paper and paper products at the beginning of the year were substantial and much was sold at the lower prices ruling during the year. Both in our printing works and in our copying departments, higher wages costs resulting from the operation of cost of living bonuses, payable in the main under trade agreements, were absorbed without any increase in our charges. In addition, departmental and administrative expenses continued to increase.

A note in the profit and loss account shows that the profit includes an amount estimated not to exceed £6,500, which arose from a change in the method of valuing our stocks in conformity with a new valuation basis required for tax purposes. Our stocks at the end of the year were valued on the basis of the prices at which they could be replaced.

The removal of our London works was smoothly and efficiently carried out and, as it coincided with a lessening of the pressure of demand, little inconvenience was caused to customers. You will see that the cost of this removal, amounting to £8,895, has been deducted from the rebuilding reserve. This leaves that reserve at the substantial figure of £61,105 for use as required.

Since the end of the year, we have disposed of our freehold premises in Flaxman Terrace, and the other premises which we have vacated have been satisfactorily sub-let.

The arrangements made in 1951 for raising the balance of the finance for the new Oyez House were duly carried into effect. The first half-yearly premium of the forty years' sinking fund policy, in respect of the loan from the Legal and General Assurance Society, Ltd., has been paid.

The dividend this year is payable for the first time on the increased capital of £200,000, and the directors recommend a final dividend of 10 per cent., making 14 per cent. for the year. They recommend a transfer of £5,000 to general reserve and of £7,500 to taxation equalisation reserve, bringing that reserve up to £30,000.

The additions to " machinery, plant and type " and " furniture, fittings and motor cars " during the year were heavier than in recent years, and arose largely from the equipping of the new London works.

During the year, we celebrated the jubilee of our National Conditions of Sale. First published in 1902 at the suggestion of Mr. Kendall, a solicitor's managing clerk, of Norwich, these conditions have been, and still are, widely used in the profession, and constitute a valuable property.

The circulation of THE SOLICITORS' JOURNAL continues to increase and the arrangement made with the Incorporated Council of Law Reporting for " Notes of Cases " further enhances its value to solicitors.

During and since the war, we were forced to lower the standard of quality of many of our products. One advantage of the change in trading conditions has been the return of good quality paper at a reasonable price. The directors and management firmly believe that it is in the interests of solicitors themselves that the stationery they use and the documents they prepare should never deteriorate to the second rate.

We have taken, and are taking, steps to effect economies wherever possible and to keep our printing works fully occupied by endeavouring to increase the amount of commercial printing undertaken. The price of paper now appears to have reached some measure of stability. Our results this year must largely depend on the level of legal work and the economies we are able to effect.

Our managers and staff have again given of their best throughout a trying year and I am sure you would wish me to express on your behalf our sincere thanks to them for their loyal work.

Finally, I should like to refer to Mr. Holroyde whom we have recently appointed managing director. Mr. Holroyde joined the Society in 1923 and has been general manager since 1936. He has earned for himself an important place in the trade, and the Society is very fortunate to have a man of his outstanding ability and experience as managing director.

The report and accounts were unanimously approved, and Mr. Francis James Holroyde, retiring in accordance with the articles, and Mr. Kenneth Davey Cole and Sir William Alan Gillett, retiring by rotation, were re-elected as directors.

The remuneration of the auditors was fixed for the ensuing year.

The meeting terminated with a vote of thanks to the directors.

POINTS IN PRACTICE

Questions from solicitors who are ***REGISTERED ANNUAL SUBSCRIBERS*** *are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.*

Title to Legal Estate—TRUST FOR SALE ARISING BEFORE 1926 ON DEATH OF LAST SURVIVING EXECUTOR WHO IS ALSO TENANT FOR LIFE

Q. Testator *A* by his will dated in 1878 appointed *B* (his widow) and *C* executors, and gave his real estate unto *C*, his heirs, executors and administrators upon trust to pay the income to *B* for life and from and after her death to sell and dispose of the real estate upon trust to pay and divide the residue of the trust moneys unto and equally between all and every his children or child, their respective executors, administrators and assigns absolutely in equal shares and proportions as tenants in common on attaining the age of twenty-one years or on the decease of *B* which should first happen [*sic*]. *C* predeceased *A* and probate of *A's* will was granted to *B*, the survivor, in 1910. *B* died intestate in 1920 and no grant of administration of her estate has been taken out. There were two children, *D* and *E*, both of whom survived *B*. *D* died in 1940, having left a will which was proved by his widow *F*. *F* subsequently died and probate of her will was granted to *G*, the sole executrix and beneficiary under the will of *F*. *E* died in 1945, having left a will which was proved by her husband, *H*, who was the sole executor and beneficiary. *H* subsequently died and probate of his will was granted to *I* and *J*. *K*, the nephew of *H*, is now entitled to his estate. (*K* was not a blood relation of *E*.)

It is now desired to sell the real property and the question arises as to who are the proper persons to convey and how they should do so. The opinion is advanced that the land was vested in *B* as trustee and, had a grant of representation been taken out to her estate, it would have devolved upon her personal representatives. It would appear to follow that if letters of administration to *B's* estate are now applied for by her grandchild, *G*, and *G* subsequently appoints *K* to be a trustee together with herself for the purposes of the conveyance, they can make a good title to the land. It is contended that para. 2 of Pt. IV of the First Schedule to the Law of Property Act, 1925, does not apply, as on 1st January, 1926, the entirety of the land was not vested absolutely and beneficially in *D* and *E*. They were only entitled in undivided shares to the proceeds of sale. Do you agree with these conclusions?

A. We agree that the transitional provisions of para. 2 of Pt. IV of Sched. I to the Law of Property Act, 1925, have no application by reason of the trust for sale which arose on *B's* death under the will of *A*. We also agree that the land could be regarded as having been vested in *B* as trustee (*Re Timmis* [1902] 1 Ch. 576) and that upon letters of administration being granted to her estate the trust estate will vest in her administratrix, who could appoint *K* to be her co-trustee and *G* and *K* could then sell as trustees for sale. If this course is adopted *G* would apply for the grant not as grandchild of *B* but as personal representative by representation of her father's estate; as grandchild she has no interest in *B's* estate, *D* having survived his mother. *I* and *J* have a right to a grant equally with *G*. On the other hand, it is also possible to regard *B* as not having held the legal estate as trustee but as having vested in her a legal life interest under *A's* will. This view seems to us to be reinforced by the circumstances that *B* is not expressly made a trustee by *A's* will and also that the trust for sale does not come into existence until *B's* death, making somewhat difficult the conception of her trusteeship during her lifetime. If this latter view is correct it seems to us that *G* and possibly *K* could obtain a grant of letters of administration *de bonis non* and with the will annexed to *A's* estate and make title as such administrator, perhaps a simpler course than the trustees' sale proposed by our subscribers. We do not, however, express any preference for either view and we consider that a good title could be made by either method.

NOTES AND NEWS

Honours and Appointments

The First Lord of the Treasury has appointed Sir JOHN ROWLATT to be first Parliamentary counsel with effect from 16th September next, in succession to Sir Alan Ellis, Q.C. Mr. N. K. HUTTON has been appointed second Parliamentary counsel in succession to Sir John Rowlatt. Sir Alan Ellis will continue as head of the consolidation branch of the Office of Parliamentary Counsel and chairman of the Statute Law Committee.

His Excellency Mr. Justice JOHN ERSKINE READ, a judge of the International Court of Justice, has been elected an Honorary Master of the Bench of Gray's Inn.

The Board of Trade have appointed Mr. ALAN REGINALD BAILEY to be Assistant Official Receiver for the Bankruptcy District of the County Courts of Southampton, Bournemouth and Winchester; the Bankruptcy District of the County Courts of Portsmouth, Newport and Ryde; and also for the Bankruptcy District of the County Courts of Salisbury, Dorchester and Yeovil, with effect from 5th May.

Mr. K. N. L. LAND, solicitor, of Peterborough, was elected chairman of Wisbech Round Table at their annual meeting on 4th May.

Mr. T. ALAN STUCHBERY, solicitor, has been re-elected Mayor of Maidenhead.

Personal Notes

On retiring from the position of clerk to the Wokingham, Berks, magistrates, Mr. J. H. Elliston Clifton was presented with an inscribed silver cigarette box.

Forty-nine years after becoming the youngest justices' clerk in the country, Mr. A. J. Hitchman Iles has retired, after serving the whole of that time at Fairford, near Cirencester, Magistrates' Court. He is remaining in practice.

Mr. Frank Keighley, for the past seven years chief clerk in Keighley Town Clerk's Department, is to retire after forty-six years' service with Keighley Corporation.

Mr. John Houison Richardson, solicitor, of Bradford, was married on 16th May to Miss Evelyn May Bloomfield, of Leeds.

Miscellaneous

SUPREME COURT: QUEEN'S BIRTHDAY, 1953

It has been decided that as the Courts and Offices will be closed on 2nd and 3rd June on account of the Coronation it would be undesirable to close them again for the celebration of the Queen's Birthday in the following week. The Courts will accordingly sit and the Offices remain open on Thursday, 11th June.

DEVELOPMENT PLANS

LINCOLN DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Lincoln. The plan, as approved, will be deposited in the council offices for inspection by the public.

BERKSHIRE COUNTY COUNCIL DEVELOPMENT PLAN

On 28th April, 1953, the Minister of Housing and Local Government approved (with modifications) the above development plan. Certified copies of the plan as approved by the Minister have been deposited at the office of the Clerk of the County Council and at County Planning Office, 6 and 7 Abbot's Walk, Reading; Abingdon Borough, Abbey House, Abingdon; Abingdon Rural District, 60 Bath Street, Abingdon; Faringdon Rural District, Council Offices, Market Place, Faringdon; Wallingford Borough, Council Offices, High Street, Wallingford; Wallingford Rural District, 1 Church Lane, Wallingford; Wantage Urban District, Council Offices, Wantage; Wantage Rural District, Council Offices, Belmont, Wantage; Hungerford Rural District, 128 High Street, Hungerford; Newbury Borough, Municipal Buildings, Newbury; Newbury Rural District, Phœnix House, Bartholomew Street, Newbury; Bradfield Rural District, 26 Bath Road, Reading; Wokingham Borough, Town Hall, Wokingham; Wokingham Rural District, Shute End, Wokingham; Cookham Rural District, "Oaklands," 1 Bath Road, Maidenhead; Easthampstead Rural District, Council Offices, Church Road, Bracknell; Maidenhead Borough, The Guildhall, Maidenhead; Windsor Borough, Kipling Memorial Building, Windsor; Windsor Rural District, Council Offices, Bowden Road, Sunninghill. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between 9.30 a.m. and 4.30 p.m. from Monday to Friday and between 9.30 a.m. and 12 noon on Saturdays. The plan became operative from 8th May, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 8th May, 1953, make application to the High Court.

NOTE.—Copies of the documents comprising the above plan are to be made available for sale to the public as soon as the necessary arrangements for printing can be carried through.

Order forms and particulars can now be obtained from the County Planning Officer, 6–7 Abbot's Walk, Reading.

DOUBLE TAXATION: BELGIUM

The Double Taxation Convention with Belgium, which was signed on 27th March, was published on 15th May as a Schedule to a draft Order in Council.

The Institute of Public Administration invites members of the Public Services, i.e., civil servants and officers of the municipal and other public authorities, throughout the British Commonwealth, to enter an Essay Competition for the Haldane Prize of £10 and a silver medal, which is awarded annually to the writer of the essay regarded as the most useful contribution to the study of Public Administration. The closing date for entries is 30th September, 1953. The judges this year will be Mr. T. L. Poynton, Borough Treasurer of Blackpool, and Professor K. B. Smellie, Professor of Political Science at the London School of Economics. Details can be obtained from the Director, Haldane House, 76A New Cavendish Street, London, W.1. Telephone No. LANgham 8881.

SOCIETIES

The fiftieth anniversary of the ISLE OF WIGHT LAW SOCIETY was celebrated on Saturday, 25th April, by a jubilee dinner at the Royal Hotel, Ventnor, under the chairmanship of the President, Mr. C. F. Hiscock. Guests included Mr. Norman J. Skelhorn (Chairman, Isle of Wight Quarter Sessions) and Mrs. Skelhorn, the President and the Secretary of The Law Society, and the President and the Secretary of the Hampshire Incorporated Law Society. Mr. W. K. Pearce, T.D. (President of the Hampshire Society), proposed the toast of "The Isle of Wight Law Society," to which the President replied; Mr. Skelhorn proposed "The Law Society," to which Mr. D. L. Bateson, C.B.E., M.C. (President of The Law Society), responded; and "The Visitors" was given by Mr. W. J. Eldridge, O.B.E., to which Mr. T. G. Lund, C.B.E. (Secretary of The Law Society), replied.

At the annual meeting of the KENT LAW SOCIETY, held at Maidstone on 2nd May, Mr. Henry Wallace Youden, solicitor, of Dover, was elected President for the ensuing year. Mr. Youden, who has recently completed sixty-five years with his firm, has been successful in the ballot for two Coronation seats, offered to presidents of Provincial Law Societies.

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